











# STATE OF NEW HAMPSHIRE



## ORGANIZATIONAL DAY

*December 2, 1998*

The Clerk, Gloria Randlett, called the Senate to order at 10:30 a.m.

The prayer was offered by Rev. David P. Jones, Senate Chaplain.

Just to lend a little historical perspective to the significance of this day, the Boston Red Sox won the World Series more recently than the Democrats have been in charge of the New Hampshire Senate. There is hardly anyone alive today who can remember either of those occurrences. That was back in your first term, wasn't it, Junie? Someone wrote recently in the newspaper that, when it comes to politics, it is important to not confuse character with leadership. That makes about as much sense as saying that when it comes to flying, it is important to not confuse the wings with the fuselage. You Twenty-four, both republican and democrat together, who are about to sit down in these uncomfortable leather chairs of responsibility and trust are going to lead us, over the coming months, in some ways and into some places that neither you nor we can predict with much accuracy or certainty. And you are going to need a lot more than our best wishes and some good luck to pull this thing off without pulling us all apart. Each one of you is marked, characterized with an innate uniqueness and goodness. As you lead us, remember that, nurture that, hang on to that. Your effectiveness and your success here will come, not from political dexterity or good luck, but rather from what is there, deep inside you, the character that marks who you really are. Lead us from there, and all will be well.

*Lord, even of legislative logistics and political proficiency, draw close now to each person here, chosen to serve in this hallowed chamber. By the power of Your character, transform each one of them from being merely successful politicians into becoming effective and distinguished leaders. May they lead us carefully. May they lead us wisely. And for Your sake and ours, may they lead us together.*

*Amen*

Senator Blaisdell, Dean of the Senate, led the Pledge of Allegiance.

The Clerk of the Senate, Gloria M. Randlett, called the Roll of the Senate for attendance.

There were 24 members present.

### OATH OF OFFICE FOR SENATOR

At this time, on the first Wednesday in December, in the year of our Lord, one thousand nine hundred and ninety eight, being the day pre-

scribed by the constitution for the legislature of New Hampshire to assemble and the honorable C. Jeanne Shaheen, governor of the state of New Hampshire, accompanied by the honorable governors council, having come into the Senate chamber, will now subscribe the oaths of office and witness the signing of the oath by each individual Senator, and verify that these are duly qualified as senators agreeably to the provisions of the constitution: C. Jeanne Shaheen, governor of the state of New Hampshire.

GOVERNOR C. JEANNE SHAHEEN: Before I give the oath of office to everyone, I just want you to know how exciting this is for me, having come out of this body, and knowing how important it is to the citizens of the state and knowing how hard all of you work and how seriously you consider your responsibilities, and how exciting it is for me to be here to administer this oath of office today. It is wonderful. We obviously have a lot of work to do. So we can't waste any more time.

On behalf of the Executive Council, I would like to swear in the honorable Senate:

District No. 1	Frederick W. King, Sr.
District No. 2	Edward M. Gordon
District No. 3	Carl R. Johnson
District No. 4	Leo W. Fraser, Jr.
District No. 5	Clifton C. Below
District No. 6	Caroline McCarley
District No. 7	Rick A. Trombly
District No. 8	George F. Disnard
District No. 9	Sheila Roberge
District No. 10	Clesson J. Blaisdell
District No. 11	Mark Fernald
District No. 12	James W. Squires
District No. 13	Debora B. Pignatelli
District No. 14	Gary R. Francoeur
District No. 15	Sylvia B. Larsen
District No. 16	Patricia Krueger
District No. 17	Mary E. Brown
District No. 18	John A. King
District No. 19	Richard L. Russman
District No. 20	Lou D'Allesandro
District No. 21	Katherine Wells Wheeler
District No. 22	Arthur Paul Klemm, Jr.
District No. 23	Beverly A. Hollingworth
District No. 24	Burton J. Cohen

## NOMINATIONS

Nominations for temporary presiding officer.

Senator Larsen nominated Senator Burt Cohen for temporary presiding officer.

Senator Russman seconded the nomination.

Further nominations.

Senator Gordon moved that nominations for temporary presiding officer be closed.

**Adopted.**

Question is on electing Burton Cohen for temporary presiding officer.

**Adopted.**

Senators Hollingworth and Roberge escorted temporary presiding officer, Burton Cohen, to the rostrum.

Senator Cohen, the presiding officer, asked for nominations for the president of the Senate.

Senator J. King nominated Senator "Junie" Clesson Blaisdell, for the president of the Senate.

SENATOR J. KING: To say a few words about Junie Blaisdell is quite difficult. To say a lot of things about Junie Blaisdell is not. So I am going to take the lessor because I feel like a mosquito at a lawn party, where do you start? Well, first of all, let me tell you that it is a great pleasure. A long, long, long time pleasure coming. It is a long time pleasure for me, because I am nominating the first democratic Senate president in 86 years. No one has more experience that has ever taken that seat before, in the history, I think, of this body, nobody. No one has 15 years as a state Senator. He certainly knows the job; in fact, I think that he has been in training since the last democratic Senate president that we have had. I am not the only one who thinks that because everyone comes up and they all know Junie Blaisdell. He is the most knowledgeable president for the Senate in all areas, but especially in Finance, which is quite important. He has been helpful to every new Senate that comes in, every old Senator, and I am not talking about age here, I am talking about service time, in any way, shape that he can. He is very frank with his answers, quick with his answers, sharp with his answers and every one of those answers that he gives you is the truth, usually, and everyone of us go to him when we need help and he provides it. Again, it is my great pleasure and I think the great pleasure of all of the Senators here who have worked with him over the years and have worked close with him. He certainly has the knack of working between the republicans and the democrats, he has a lot of practice at it these last 15 years. Again, I take great pleasure in nominating Senator Clesson Blaisdell as the next president of this Senate.

Senator F. King seconded the nomination.

SENATOR F. KING: I am honored to second the nomination of Senator Blaisdell as our next Senate President. Today we are going to choose a leader, not just a president. This leader is going to have to lead us through two difficult years. The job that we all face will be one of great challenge and, in fact, the issues that we will be dealing with may be greater than any other Senate and legislatures face in recent times. We need a leader of many talents. We need a leader who will be fair. We need a leader that will be dedicated to the work of the Senate. We need a leader who will be dedicated to the state Senate as an institution. Who better to do that than a Dean of the Senate? We are going to need a consensus builder, one who understands that from time-to-time you have to give in order to get. We need a Senator who understands bipartisan solutions to problems. We need a leader who can be a referee and who



can blow the whistle when the game gets out of hand, and I understand that he brings that talent to the table. Lastly, we need a leader who will make sure that the Senate can be independent and pro active and not reactive as we go forward in dealing with our problems. It is time for the Senate to take back its position as a leader in this legislature. It is time for us to set the agenda and not wait for things to come to us from the House. I know that Senator Blaisdell believes in that and will work towards that. In short, we need Junie Blaisdell to be our next Senate President and I am honored to second his nomination.

Further nominations.

Senator Below moved that nominations for president of the Senate be closed.

**Adopted.**

**Question is on electing "Junie" Clesson Blaisdell for Senate president.**

**Adopted unanimously. V. V.**

Senator Clesson Blaisdell is elected the president of the Senate.

Senator Cohen requested that Senators Disnard and McCarley escort the President of the Senate, Senator Clesson Blaisdell, to the rostrum.

**SENATE PRESIDENT, "JUNIE" CLESSON BLAISDELL:** Thank you very much, John and thank you, Senator Fred King for that glowing tribute. Thank you all for your kind words and support. My philosophy of government is really very simple. I believe that it is state government's job to see to it those New Hampshire citizens can hold a decent job, can educate themselves and their families, and can fully participate in our state's quality of life, including its political process. And even though New Hampshire's economy is now challenged by fierce global competition, a new information age and changing technologies, state government job stays the same. It is still our responsibility to provide the infrastructure for our New Hampshire citizens to work, to learn and to fully enjoy the many benefits of living in New Hampshire. Moreover, from where I stand, government must also pass the test eloquently described by Hubert Humphrey, "The moral test of government is how that government treats those who are in the in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life - the sick, the needy and the handicapped." I want all of us in this room to pass that test. I am sure that you have the will, the courage and the compassion to do that. The New Hampshire Senate is small. Its size requires each of its members to understand the "big picture", to review what the House passes by running it through the wringers of common sense and political accountability. This role is sometimes described as "reactionary" or a "constraint on innovation." Nothing could be further from the truth. The Senate's size, which enables it to move quickly and act decisively, also enables it to negotiate wisely, to compromise reliably and to innovate effectively when facing complex problems. In fact, the Senate is most effective when it uses its compact size and maneuverability to its full advantage. Operating at full strength, the Senate ought to be, can be, and if I have my way, will be, the most effective partner in New Hampshire's governing process. I am committed to doing my utmost to ensure that this Senate participates in that governing process as a full and independent partner. We are here to solve the problems in order to improve the lives of the people who sent us here. That is my goal and I am certain that it is yours as well. My

love for this Senate is no secret. To be asked to lead this body, first by my party, and then by this group as a whole, is at the same time, humbling and overwhelming. For more than 28 years, through laughter and tears, passion and partisanship, winning and losing, I have worked to represent District 10. No one knows any better than I, the personal price we pay to be here. But the sacrifice we make is worth it if our time and effort leads to full participation in our debates, our deliberations, and our decisions. I have been in the political minority all these years, but I have been allowed to participate. Every Senator should have that privilege and every Senator will as long as I am Senate president. There has been some press speculation that I was selected as some kind of "figure-head" Senate president. With all due respect, let me set the record straight on this issue. I am a democrat, and I expect to continue thinking and feeling in the same ways I always have. Democrats are the majority party and I intend to ensure that the majority party plays its rightful role in this body. But, I understand that once assumed, this job is not a partisan position. The Senate president must be the president of all of the Senate. During my tenure, the office of the Senate president, both as a position of leadership, and as a location on the third floor, will be open to all of you. To be effective, the Senate must have a strong leader. Make no mistake, I am, and intend to remain, that leader. Let me again assure you; I consider it to be my very first priority that each and all of you participate in this process. This year, as Senator Fred King brought up, we face a number of critical challenges especially in the areas of education, energy, and balancing the budget. I expect this Senate to play its proper role as our state addresses these issues. Such participation will require the talent and effort of each and every one of its members. For the Senate to be part of the solution, each of you must be a part of this process. And I pledge to you that I will do my utmost to make that happen. Most of you know that for many years I was a roundball referee. Referees enforce the rules, but as a ref, I always tried to maintain a level of control that enabled and encouraged each player on the floor to play the game "full-out," maximizing his or her skills, while minimizing conduct that might prevent other players from doing the same. So with the Senate, each of us brings to this process our own philosophies, political convictions and constituent needs. That is why we are here. Just as each of us is responsible to our respective districts, we are each responsible to one another, so that when we work together, every Senator can fully engage without preventing other Senators from doing the same. Such collaboration requires everyone's adherence to the rules of organization and procedure. We have rules to guide our procedures. These rules ensure public access and they protect us from each other. As your Senate president you can count on me to enforce the rules; and when it comes down to enforcing them, I expect my rulings to be supported and upheld (if need be). If the Senate president does not have the last word on organizational issues, the process that protects us can break down. I do not intend to let that happen. I would add that the empty chair at the end of the first floor has been filled by the Senate "wise guy" for the past several years. Well, that "wise guy" is not in this chair. I am taking applications to replace the old "wise guy," but don't anyone hold their breath while I wait to fill the job. Let me close by saying again how deeply grateful I am for the honor you have conferred on me. As the Senator for District 10, I have always respected and revered this body's integrity, its independence and its importance within state government. I promise you that I will do no less as Senate presi-

dent. I have been honored to serve under nine Senate presidents. They have been towering figures in my life. I have big shoes to fill and I know it. I am completely committed to the assignment you have given me, and again, I promise you that if you each play your part in the process, this Senate can and will play a major role in the solutions. As some of you have heard me say, I have no higher aspirations than to serve my state as Senate president. For me there is no greater calling. There is no place that I would rather be than here, and that is why, from the bottom of my heart, I humbly hope that I will be worthy of the honor and the privilege you have bestowed on me. Now, let's get to work! Thank you very much.

## INTRODUCTION OF GUESTS NOMINATIONS

Senator Trombly placed the name of Gloria Randlett in nomination for Senate Clerk.

SENATOR TROMBLY: On my way into the swearing in today, I was reminded that it was 20 years ago this month, that Gloria and I were both sworn in as freshmen representatives to the House of Representatives from the town of Boscawen. Gloria was elected Assistant Clerk in 1980 and her career and mine have taken different paths. She has moved on and went upward and I was elected to the Senate. In 1989 Gloria became the Senate Clerk and I think that Gloria has taken the Senate Clerk's office into the electronic age sort to speak. She is bright, most certainly articulate. She is organized in all of those qualities that we need to have in the Senate Clerk. Gloria brings at this time of change, the continuity that is important to see that the Senate runs efficiently. So it is a great honor for me to nominate for reelection, Gloria Randlett, my friend. Thank you very much, Mr. President.

Senator Johnson seconded the nomination.

Further nominations.

Senator Squires moved that the nominations be closed and that one vote be cast for Gloria Randlett as clerk of the New Hampshire Senate.

### **Adopted.**

Gloria M. Randlett is elected clerk of the New Hampshire Senate.

Senator Johnson moved to place the name of Tammy Wright in nomination for assistant clerk of the Senate.

SENATOR JOHNSON: It certainly gives me great pleasure to nominate a very vivacious young lady who has a lot of energy in this body. That would be Tammy Wright. I nominate her as Assistant Clerk of the Senate.

Senator J. King seconded the nomination.

SENATOR J. KING: I take great pleasure in nominating Tammy as our Assistant Clerk.

Further nominations.

Senator Fraser moved that the nominations be closed and that one vote be cast for Tammy Wright for assistant clerk of the New Hampshire Senate.

### **Adopted.**

Tammy Wright is elected assistant clerk of the Senate.

Senator Larsen moved that the name of Henry Wilson be placed in nomination for sergeant-at-arms.



Senator Francoeur seconded the motion.

Further nominations.

Senator Krueger moved that the nominations be closed and that one ballot be cast for Henry Wilson, sergeant-at-arms.

**Adopted.**

Henry Wilson is elected Sergeant-At-Arms.

Senator F. King moved that the name of Emile Martineau be placed in nomination for Doorkeeper.

SENATOR F. KING: I am pleased to offer the name of Emile Martineau to be Doorkeeper. Emile Martineau you know, before he retired and moved south was a sheriff in Coos County for many years. Sometime when I have more time I will tell you more about him, but he has done a good job as Doorkeeper, I think that we should let him have the job.

Senator Disnard seconded the motion.

SENATOR DISNARD: I am proud to second the nomination of Emile Martineau as our Doorkeeper.

Further nominations.

Senator Brown moved that the nominations be closed and that one ballot be cast for Emile Martineau, Doorkeeper.

**Adopted.**

Emile Martineau is elected Senate Doorkeeper.

The President administered the oaths of office to the Senate clerk, assistant clerk, sergeant-at-arms, and doorkeeper.

## RESOLUTION

Senator Klemm offered the following resolution:

RESOLVED, that the secretary of state be requested to furnish the Senate with the official return of votes from the various senatorial districts.

**Adopted.**

The Honorable William M. Gardner, secretary of state, appeared and presented the return of votes for state Senators from the various senatorial districts, as returned to the secretary of state's office from the general election held on November 2, 1998.

SECRETARY OF STATE, WILLIAM GARDNER: Many of you had rough elections this fall, some in the primary and some both in the primary and in the general election. It took a lot of time from your schedule and some turmoil from your families, but now is the time to let the dust settle. Now is the time to give you the chance to take the seat that you have and occupy it and fulfill the oath of the office that you have taken this morning, to work to the best of your ability for all of the citizens of our state. Article 33, part II of the constitution requires that the Secretary of State receive all of the votes cast from the cities and towns across the state, sort those and count those and bring them before you this morning in the official capacity. So I would like to read the votes cast for each of the senate districts and the plurality of the majority.

**COMMITTEE REPORT**

The Select Committee to whom was referred the various returns of votes for the state Senators from the several districts, having attended to their duties and having examined the returns made to the secretary of state and the records in the office of said secretary, report that they filed the state of the vote returned from the several districts as follows:

**First District**

Frederick W. King, Sr., r	8,460
William L. Bradley, d	<u>4,047</u>
Plurality for King	4,413

**Second District**

Edward Gordon, r	8,515
Sid Lovett, d	<u>4,523</u>
Plurality for Gordon	3,992

**Third District**

Carl R. Johnson, r	9,713
Paul Henle, d	<u>6,987</u>
Plurality for Johnson	2,726

**Fourth District**

Leo W. Fraser, Jr., r & d	10,399
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**Fifth District**

Clifton Below, d	8,172
Larry Guaraldi, r	<u>7,171</u>
Plurality for Below	1,001

**Sixth District**

Caroline McCarley, d	6,505
George A. Lovejoy, r	<u>5,490</u>
Plurality for McCarley	1,015

**Seventh District**

Rick A. Trombly, d	6,802
Amy Patenaude, r	<u>6,375</u>
Plurality for Trombly	427

**Eighth District**

George F. Disnard, d	7,209
Beverly T. Rodeschin, r	<u>6,107</u>
Plurality for Disnard	1,102

**Ninth District**

Sheila Roberge, r	9,971
Marilyn Peterman, d	<u>7,115</u>
Plurality for Roberge	2,856

**Tenth District**

Clesson J. Blaisdell, d	8,112
Samuel DeYoung, r	<u>4,137</u>
Plurality for Blaisdell	3,975

**Eleventh District**

Mark Fernald, d	7,556
David K. Wheeler, r	<u>6,068</u>
Plurality for Fernald	1,488

**Twelfth District**

James Squires, r	8,280
Lawrence Tartow, d	<u>4,581</u>
Plurality for Squires	3,699

**Thirteenth District**

Debora B. Pignatelli, d	5,666
Don Johnson, r	<u>3,158</u>
Plurality for Pignatelli	2,508

**Fourteenth District**

Gary R. Francoeur, r	6,431
Peter G. Dolloff, d	<u>4,777</u>
Plurality for Francoeur	1,654

**Fifteenth District**

Sylvia B. Larsen, d	9,565
Greg Stowell, r	<u>5,506</u>
Plurality for Larsen	4,059

**Sixteenth District**

Patricia Krueger, r	7,867
Stephen T. DeStefano, d	<u>7,862</u>
Plurality for Krueger	5

**Seventeenth District**

Mary E. Brown, r	7,356
James E. Devine, d	<u>4,368</u>
Plurality for Brown	2,988

**Eighteenth District**

John A. King, d	7,103
J. Gail Barry, r	<u>4,774</u>
Plurality for King	2,329

**Nineteenth District**

Richard L. Russman, r	6,885
Brian Woodworth, d	<u>3,196</u>
Plurality for Russman	3,689

**Twentieth District**

Lou D'Allesandro, d	5,974
Timothy S. Reiniger, r	<u>5,506</u>
Plurality for D'Allesandro	468

**Twenty-First District**

Katie W. Wheeler, d	7,588
Amos R. Townsend, r	<u>3,873</u>
Plurality for Wheeler	3,715

**Twenty-Second District**

Arthur P. Klemm, Jr., r	7,757
Stephanie K. Micklon, d	<u>5,366</u>
Plurality for Klemm, Jr.	2,391

**Twenty-Third District**

Beverly A. Hollingworth, d	8,193
John T. Dowd, r	<u>6,911</u>
Plurality for Hollingworth	1,282

**Twenty-Fourth District**

Burton J. Cohen, d	7,985
Stella Scammon, r	<u>6,168</u>
Plurality for Cohen	1,817

**RESOLUTION**

Senator Squires offered the following Resolution:

RESOLVED, that the returns from the several senatorial districts be referred to a select committee of three with instructions to examine and count the same and report to the Senate where any vacancies or contest exists and if so, in what senatorial district.

**Adopted.**

The chair appointed Senators: Cohen and Hollingworth, Johnson to examine the vote totals.

Senator Russman offered the following Resolution:

**RESOLUTION**

Let it be Resolved, that the Rules of the 1997-1998 session be adopted as the rules of the 1999-2000 session and further that these rules may be changed by majority vote for the next three legislative days.

**Adopted.****RULES OF THE SENATE**

1. Determination of quorum; correction of Journal.
2. Members, decorum of.
3. Members, conduct when speaking.
4. Members not to speak more than twice.
5. President shall recognize whom.
6. Questions of order, appeal.
7. Member, absenting himself.
8. Motions, order of preference.
9. Questions postponed indefinitely not acted upon in same biennium.
10. Questions, when divided.
11. Objections to reading paper, how determined.
12. Roll Call, everyone must vote.
13. Galleries, clearing of.
14. Reconsideration, motion for.
15. Petitions, introduction of.
16. Bills; shall be numbered and expressed clearly.
17. Bills, introduction of.
- 17-A (a) Bills, deadlines for drafting.
- 17-b Bills, deadlines for information.
- 17-c Final deadline.
18. Resolutions to be treated as bills.

19. Bills shall have three readings; progress of; time for second and third readings.
20. Bills, printing and distribution.
21. Bills amended only on second reading; filing of amendments.
22. Public hearings to be held and advertised.
23. Amended bills, printed of Journal, distributed and disposed of.
24. Appropriating money, to whom referred.
25. President to sign bills, etc.
26. Committees, appointment of.
27. Standing Committees.
28. Messages sent to House.
29. Messages, when received.
30. Voting; division of Senate.
31. Visitors to Senate.
32. Hours of meeting.
33. Rules of Senate, how suspended.
34. Rules of Senate, how rescinded.
35. Committee of the whole.
36. President may name member to chair.
37. Senate staff; composition and duties.
38. Senate staff; days of employment.
39. Committees, reports and meetings.
40. Appeal, presiding officer ruling.
41. Motions, no substitution under color of amendment.
42. Conflict of interest.
43. Committee of Conference reports.
44. Personal privilege.
45. Requisition Approval Required.
46. Fiscal notes, requirements.

### SENATE RULES

1. The President, having taken the chair, shall determine a quorum to be present. Any erroneous entry in the daily journal shall be corrected no later than the third succeeding legislative day, and the permanent journal corrected one week after the permanent journal copy is placed in the hands of the Senate.
2. No member shall hold conversation with another while a member is speaking in debate.
3. Every member, wishing to speak, shall address the President and when he has finished shall, if having risen to speak, then sit down.
4. No member shall speak more than twice on the same question on the same day without leave of the Senate.
5. More than one member rising to speak at the same time, the President shall decide who shall speak first.
6. If any member transgresses the rules of the Senate, the President shall, or any member may, call him to order; in which case the member so called to order shall immediately cease and desist, and the Senate, if appealed to, shall decide the case. But if there is no appeal, the decision of the President shall be conclusive.
7. No member shall absent himself without permission from the Senate.
8. When any question is under debate, no motion shall be received but first, to adjourn; second, to lay upon the table; third, for the previous question; fourth, to postpone to a certain day; fifth, to commit; sixth, to amend; and seventh, to postpone indefinitely; which several



motions shall have precedence in the order in which they are so arranged. Motions to adjourn, to lay upon the table, for the previous question, and to take from the table shall be decided without debate. Motions to postpone to a certain day shall be debatable both as to time and subject matter. No motion to postpone indefinitely, to postpone to a certain day, or to commit, being decided, shall be in order at the same stage of the bill or resolution, until after adjournment.

9. A question which is postponed indefinitely shall not be acted upon during the biennium except whenever two-thirds of the whole number of elected Senators shall on division taken, vote in favor thereof. Any bill which is indefinitely postponed shall not be reintroduced under cover of an amendment to the general appropriations (budget) bill. No motion to suspend this rule shall be permitted.
10. Any member may call for a division of the question when the sense will admit it. Unless otherwise specifically provided for, a majority of those present and voting shall be required to pass any vote.
11. When the reading of a paper or document is objected to by a member, the question shall be determined by a vote of the Senate; and without debate.
12. When the nays and yeas have been moved by a member and duly seconded by another member, each member present shall declare his assent or dissent to the question, unless for special reason he be excused by the Senate. The names of the persons so making the motion and the second shall be recorded in the Journal. A member who is to be absent when the yeas and nays are required may pair his vote with another member, to be present or also to be absent, who intends to vote on the opposite side of the question. Pairs shall be permitted only if the yeas and nays are taken on such question. Both members shall file such pair in writing with the Clerk before the question is put. In all cases of pairing, the vote of neither member shall be counted in determining the result of the roll call; but the Clerk shall announce all pairs and enter them in the Journal. The President shall determine the order of the roll call. No member shall be required to vote in any case where he was not present when the question was put.
13. In case of any disturbance or disorderly conduct in the gallery, the President shall have the power to order the same to be cleared. The Chairman of the Committee of the Whole may restrict attendance to the duly elected Senators.
14. No vote shall be reconsidered, unless the motion for reconsideration be made by a member who voted with the prevailing side, nor unless the notice of such motion be given to the Senate in open session prior to adjournment on the same day on which the vote as passed, or on the next day on which the Senate shall be in session within one half hour after the convening of the early session, and any such notice of reconsideration shall be effective for three legislative days only and thereafter shall be null and void.
- 14 (a) Reconsideration of any bills subject to a transfer date established by joint rules must be acted on or before the joint rule deadline, and thereafter shall be null and void.
15. Before any petition shall be received and read, a brief statement of the contents thereof shall be made by the member introducing the same.

16. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced in the Senate, shall be endorsed with the name of the Senator presenting them, and with the subject matter of the same. Every bill shall be marked on the first page "Senate Bill" and numbered serially; every joint resolution shall be marked "Senate Joint Resolution" and numbered serially; every concurrent resolution proposing a constitutional amendment shall be marked "Concurrent Resolution Proposing a Constitutional Amendment" and numbered serially; and every other concurrent resolution shall be marked "Senate Concurrent Resolution" and numbered serially, as each bill or resolution is introduced into the Senate.

17. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced into the Senate shall be delivered or caused to be delivered to the Office of Legislative Services, which in turn will submit it to the sponsor for his signature, and then to the Clerk by Legislative Services. If requested by the sponsor, a proposed bill, resolution or petition shall not be made public, except by the sponsor, until signed by the sponsor. During any adjournment the President may receive bills and resolutions for printing and for reference to committee, provided that no bill shall have a public hearing until it is formally introduced into the Senate, printed and available for distribution. The President shall take up all bills and resolutions for introduction at the early session.

17-A (a) The Office of Legislative Services shall not draft a Senate bill or joint resolution, other than the general appropriations (budget) bill or the capital budget bill, unless a request by a member for drafting with complete information has been received not later than 5:00 pm Wednesday December 18, 1996.

(b) Every Senate bill and joint resolution, other than the general appropriations (budget) bill or the capital budget bill, must be signed off in Legislative Services by 5:00 p.m., on Friday, January 3, 1997.

(c) Notwithstanding the provisions of 17 (a), (b), and (c), a Senate bill, Senate joint resolutions, or Senate concurrent resolution may be accepted by Legislative Services for drafting and introduced into the Senate at any time prior to the deadline established by Joint Rules for the transfer of bills out of the first body if approved by either a majority of the Senate Rules Committee or a two-thirds vote on the floor.

(d) No bill the subject matter of which has been indefinitely postponed or made inexpedient to legislate in the Senate in the first-year session shall be admitted into the second-year session whether as a bill, an amendment, a committee of conference report or in any other manner;

(e) Legislation returned from the non-originating body, with an amendment, shall not be re-referred to Committee but shall have one of the following recommendations: Concur, Nonconcur, Nonconcur and Request a Committee of Conference.

17-B Committees of Conference.

(a) Whenever there be any disagreement between the Senate and the House on the content of any bill or resolution, and whenever both bodies, voting separately, have agreed to establish a committee of conference, the President of the Senate shall appoint three members to the Senate conference committee on the bill and the Speaker of the House shall appoint four members to the House conference com-

mittee. Exceptions: (1) the House committee of conference on the operating budget shall consist of five members; (2) the number of the members of the committees of conference on any bill may increase or decrease if the President and the Speaker both agree. The two committees of conference on a bill shall meet jointly but vote separately while in conference. A unanimous vote by both committees of conference shall be necessary for an agreed report to the Senate and the House by the committees of conference.

(b) The first-named person from the body where the bill or resolution in disagreement originated shall have the authority to call the time and place for the first meeting of the committees of conference on said bill.

(c) The first-named person on a committee of conference shall be the chairman of that conference. The chairman of the committee of conference of the body where the bill or resolution in disagreement originated shall chair the joint meeting of the committees of conference.

(d) No action shall be taken in either body on any committee of conference report earlier than some subsequent day, after the report has been delivered to the seats or placed on a member's desk. A committee of conference may neither change the title of any bill submitted to it nor add amendments which are not germane to the subject matter of the bill as originally submitted to it.

(e) Conference Committees on budget bills. The report of each committee of conference on either the general appropriation bill, or the capital improvements bill shall be printed in the journal or a supplement thereto of the appropriate body before action on said report is taken on the floor. Non-germane amendments, sections and footnotes to such bills (except footnotes in explanation of the principal text of such bills or designating the use or restriction of any funds or portions thereof) are prohibited and shall not be allowed under any circumstances. Notwithstanding the general provisions of paragraph (h) of this section, the Conference Committee on general appropriations bill may propose new items for inclusion in said bill, but no such item may be so included unless and until it shall have been returned to both the Senate and the House and adopted in identical form by a majority vote in each body.

(f) When both committees of conference on a concurrent resolution proposing an amendment to the constitution have agreed, the committee of conference from the body which acceded to a request for committees of conference shall file its report with the clerk of that body who shall print it in full in the journal or supplement of that body. The report shall be made a special order of business at the late session of a subsequent day. After said report has been adopted by the first body, a message shall be transmitted to the second body which shall then act upon the report of its committee of conference.

(g) A sponsor of any bill or joint resolution referred to committees of conference shall, upon his request, be granted a hearing before said committees prior to action thereon.

(h) No member of a committee of conference shall sign any report that contains non-germane amendments or subject matter that has been indefinitely postponed in either body. For the purposes of this rule, a non-germane amendment would be any subject matter not contained in either the House or the Senate version of the bill.

18. All resolutions which may require the signature of the Governor shall be treated in the same manner as bills.



19. Every bill shall have three readings in the Senate previous to its passage. The first and second readings shall be by title only which may be accomplished by a conglomerate resolution, after which the bill shall be referred by the President to the appropriate committee and shall be printed as provided in Rule 20, unless otherwise ordered by the Senate. No bill after it has been read a second time shall have a third reading until after adjournment from the early session. The time assigned for the third reading of bills and resolutions shall be in the late session unless otherwise ordered by the Senate. The orders of the day for the reading of bills shall hold for every succeeding day until disposed of.
20. After every bill shall have been read a second time, and referred by the President to the appropriate committee, the Clerk shall procure a sufficient number of copies, printed on paper of uniform size, for the use of the legislature, and cause the same to be distributed to the members, and when printed the bill shall be immediately delivered to the committee to which it shall have been referred. Bills received from the House shall be printed at the same stage of their procedure unless they have been printed in the House and copies distributed in the Senate, in which case any amendment made by the House shall be duplicated and distributed in the Senate.
21. No amendment shall be made but upon the second reading of a bill; and all amendments to bills and resolutions shall be in writing, with the name of the Senator and the district he represents thereon. No amendment to any bill shall be proposed or allowed at any time or by any source, including a committee of conference, except it be germane. Amendments shall have been reviewed by the Office of Legislative Services for form, construction, statutory and chapter reference.
22. A hearing shall be held upon each bill referred to a committee, and notice of such hearing shall be advertised at least 7 days before hearing in the Senate Calendar. The Senate Calendar shall be available on the World Wide Web for viewing as soon as it has been released for printing.
- (a) All bills in the possession of committees shall be reported out with one of the following recommendations: ought to pass, ought to pass with amendment, inexpedient to legislate, or refer for interim study. Refer for interim study shall be a committee report only in the second year.
- (b) Any legislation creating a chapter study committee shall have membership limited to members of the General Court.
23. When a bill is reported favorably with an amendment, the report of the committee shall state the amendment, and then recite the section of the bill in full as amended. The amendment shall be printed in the calendar of the Journal on the date that the report is listed for action. If no action is taken on that day, then the amendment shall be printed on the day to which the bill has been referred. All bills reported shall be laid upon the table and shall not be finally acted upon until the following legislative day, and a list of such bills with the report thereon shall be published in the Journal for the day on which action shall be taken.
24. Every bill and joint resolution appropriating money, which has been referred to another committee and favorably accepted by the Senate, shall be committed to the **Finance Committee** for review. If any such bills have been referred jointly to the **Finance Committee** and an-

other standing committee, the **Finance Committee** may report separately and a further public hearing may be held at the discretion of the **Finance Committee**. All bills appropriating money, which are referred directly to the **Finance Committee** shall have a hearing. Any bill which has been referred to another committee and favorably accepted by the Senate, which has an economic impact on the state may be referred to the Committee on Economic Development for review. The Committee on Economic Development may hold a further public hearing at the discretion of the Committee.

25. All warrants, subpoenas and other processes issued by order of the Senate shall be under the hand and seal of the President attested by the Clerk.
26. All committees of the Senate, including Senate members on committees of conference, shall consist of members of both parties as nearly equal as possible, provided that on all committees, both parties shall be represented. The President shall appoint the members of all committees, after consulting with the minority leader.
27. The standing committees of the Senate shall be as follows: **The Committee on Finance, Committee on Capital Budget, Committee on Ways & Means, Committee on Banks, Committee on Economic Development, Committee on Education, Committee on Environment, Committee on Executive Departments & Administration, Committee on Insurance, Committee on Internal Affairs, Committee on Interstate Cooperation, Committee on Judiciary, Committee on Public Affairs, Committee on Public Institutions, Health & Human Services, Committee on Rules & Enrolled Bills, the Committee on Transportation and the Committee on Wildlife & Recreation.**
28. Messages shall be sent to the House of Representatives by the Clerk of the Senate.
29. Messages from the Governor or House of Representatives may be received at all times, except when the Senate is engaged in putting the question, in calling the yeas and nays, or in counting the ballots.
30. All questions shall be put by the President, and each member of the Senate shall signify his assent or dissent by answering yea or nay. If the President doubts, or a division is called for, the Senate shall divide. Those in the affirmative on the question shall first rise from their seats and stand until they be counted. The President shall rise and state the decision of the Senate.
31. No person except members of the executive, or members of the House of Representatives and its officers, shall be admitted to the floor of the Senate, except by the invitation of the President, or some member with his consent.
32. The Senate shall adjourn to meet on the subsequent legislative day for the early session at the time mentioned in the adjournment motion. The late session shall immediately follow the early session unless the Senate shall otherwise order.
33. No standing rule of the Senate shall be suspended unless two-thirds of the members present vote in favor thereof. This rule shall not apply to Senate Rule 9.
34. No rule shall be rescinded unless two days notice of the motion has been given and two-thirds of those present vote therefor.

35. The Senate may resolve itself into a Committee of the Whole at any time on motion made for that purpose; and in forming a Committee of the Whole, the President shall leave the chair, and appoint a chairperson to preside in committee.
36. The President when performing the duties of the Chair may, at any time, name any member to perform the duties of the Chair.
37. The staff of the Senate shall be comprised of a clerk, an assistant clerk, a sergeant-at-arms, and a doorkeeper who are to be elected by the Senate, and such other personnel as the President shall appoint. The President shall define the duties of all members of the Senate staff which are not fixed by statute or otherwise ordered by the Senate.
38. Each member of the staff of the Senate shall be available on call to carry out the work of the Senate.
39. The committees shall promptly consider and report on all matters referred to them. The President may authorize such committees having a heavy load of investigation, re-drafting, research or amendments to meet as needed on non-legislative days during the legislative session. The Clerk of the Senate shall prepare a list by number, title and sponsor of all Senate bills and resolutions in committee which have not been acted upon within one week before the deadline established for the transfer of bills and resolutions from the Senate to the House of Representatives, and he/she shall distribute this list to every member of the Senate as soon as it is prepared.
40. Any appeal from the ruling of the presiding officer shall be decided by majority vote of the members present and voting.
41. No new motion shall be admitted under color of amendment as a substitute for the motion under debate.
42. In all instances every member shall act in conformance with the duly adopted Ethical Guidelines and Opinions of the New Hampshire General Court.
43. Action on the floor of a report of the Committee on Finance or a Committee of Conference on either the general appropriations (budget) bill or the capital budget bill, shall not be taken by the Senate, until said report has been available from the Senate Clerk twenty-four hours in advance, in written form. Non-germane amendments and footnotes to such bills (except footnotes in explanation of the principal text of such bills or designating the use or restriction of any funds or portions thereof) are prohibited and shall not be allowed under any circumstances.
44. **PERSONAL PRIVILEGE:** A Senator may, as a matter of personal privilege, defend his/her position on a bill, his/her integrity, his/her record, or his/her conduct, against unfair or unwarranted criticism, or may speak of an issue which relates to his/her rights, privileges or conveniences as a Senator; provided, however, the matters raised under personal privilege shall not be subject to questioning, answer, or debate, by another Senator. Personal Privilege remarks may be included in the Daily Journal if requested by the Senator, and in the Permanent Journal by vote of the Senate. A Senator may speak on other matters of his/her choosing and in such cases may be subject to questioning and/or answer according to the Rules of the Senate.
45. No officer or employee of the Senate during the session or any adjournment thereof shall purchase or contract for the purchase, pay



or promise to pay any sum of money on behalf of the Senate or issue any requisition or manifest without the approval of the Senate President.

46. If a drafting request for a bill or resolution has been filed with the office of Legislative Services requiring a fiscal note as provided in RSA 14:44-47, the substance or a draft of the proposal may be provided to the legislative budget assistant for preparation of the required fiscal note without the specific consent of the sponsor of the proposal, provided that the identity of the sponsor shall not be disclosed.

### **COMMITTEE REPORT**

Senator Hollingworth reported that the select committee to whom was referred the various return of votes for state Senators from the several districts, having attended to their duties and having examined the returns made to the secretary of state and the records in the office of said secretary, report that they find the state of the vote returned from the several districts to be correct.

**Adopted.**

### **RESOLUTION**

Senator Pignatelli offered the following resolution:

Salary and Mileage Payments to the Members of the Senate:

RESOLVED, that the salary of the members of the Senate be paid in one undivided sum as early as practical after adoption of this Resolution, and be it further Resolved, that mileage of members of the Senate be paid every two weeks during the session.

**Adopted.**

### **RESOLUTION**

Senator Roberge offered the following resolution:

RESOLVED, that the clerk of the Senate be authorized to provide during the session one daily or two weekly newspapers printed within the state or daily newspaper clips to the members and officers of the Senate.

**Adopted.**

Senator Trombly offered the following:

### **SENSE OF THE SENATE**

Whereas, the constitutional requirement under part 2, article 18 that all money bills originate in the House of Representatives, means that the Senate is dependent of the House for starting legislation relative to raising money for the purpose of addressing the Claremont II lawsuit and related decisions of the supreme court; and

Whereas, it shall be conveyed that it is the sense of the Senate

That the House of Representatives act expeditiously in the 1999 session of the general court to adopt proposed legislation addressing the Claremont II lawsuit and related decisions of the supreme court; and

That the House act with due deliberation and speed, and with due regard to the April 1, 1999 deadline, so that the Senate may address the proposed action of the House by the beginning of February 1999 and have sufficient time for deliberation on the matter and have sufficient time for final adoption of any proposed solution.

That the Senate clerk shall convey this sense of the Senate to the clerk of the House of Representatives.

SENATOR TROMBLY: Mr. President, I think that it is clear that the Supreme Court has asked that the legislature act with all due haste that is needed to set the guideline of April 1999 for us to act on legislation to correct the Claremont II decision. I think that it is very important whereby we in the Senate are constrained by the constitution part II, article 18 that we can only consider money matters that come to the Senate by way of the House. It is important that we let the House know that we are organized and that we are ready to proceed in dealing with the resolution of the Claremont decision; therefore, what I would like to do today as the first message going forward from this newly organized Senate, is that we address the Claremont Issue with all due haste and within that timeframe. Given that we can't do that until the House gets its act in order and reports legislation to us for our consideration, I am asking to be the Sense of the Senate that we request the House provide us with their resolutions for Claremont, their proposed resolutions by February. The beginning of February 1999. That would set up an informal schedule for us to be...them to consider their legislation during the remainder of December, the month of January we would then have February presumably March to work out any differences and we could resolve whatever issues remain in concert with the governors office by the April deadline. The worst position that we could be in as a co-equal branch with the House is for them to not report their legislation expeditiously so that our deliberations would be tied up with the deadline of April. We need that time to consider the legislation that they pass over to us. So I am asking that it be the Sense of the Senate today that we ask the House to get their legislation to us by the beginning of February for our consideration so that we can have time to deliberate and act on the Claremont Decision, so that we are not staring down the barrel of the gun in this very, very, very important matter. Mr. President, I understand that it is the Sense of the Senate and my 12 democratic colleagues and I would ask that our 12 republican colleagues would join us in supporting this resolution so that it would be unanimous and that we would proceed expeditiously with Claremont.

**Recess.**

**Out of Recess.**

SENATOR F. KING: Mr. President, I certainly do not want to start out this process by voting against something like this but my question to you, Mr. President, is even though we can't introduce legislation, it appears to me that there is no reason why this Senate can't start immediately to come up with the Senate version of how to deal with the Claremont issue and start to work on legislation if necessary. I think what we said earlier about moving ahead and being coactive and having our own agenda, I am concerned that we are sending a message to the House that says get your stuff together and get it over to us as quick as you can. We went through that last year and we ended up seven days before we had to go home, having to make a decision that we didn't know anything about. So my question to you is there any reason why we can't start our committees immediately working on this issue? If we have the bill ready before the House has their ready we can wait and amend it later.

SENATOR BLAISDELL (In the Chair): Senator King, as you know, you and I have talked about this and Senator Trombly have too and certainly Senator Hollingworth and I have talked about it. We are going to start tomorrow to go to work on the problems that you and I and others have

talked about in this room. I have spoken to Senator Trombly and this is only a Sense of the Senate. It doesn't bind us to anything. Senator Trombly do you want to add anything to that?

SENATOR TROMBLY: I think that the problem is that we can start to work, but you hit the nail on the head when you said that the Senate was in the position of having to wait for the House to act and we are right back with that constitutional limitation now. We can proceed with how we are going to deal with the Claremont Decision, but the problem is that the constitution says that money bills have to start over there. This is just simply a Sense of the Senate sort of a requesting of the House, would you please act on your money bills and get them to us before February. I think given the fact that the court has quite clearly said that April is where we have to go, that we are absolutely going to be in the wrong position. We are going to be behind the wrong end of the horse if the House doesn't act expeditiously. This is simply a request from the Sense of the Senate that you do that to the House and get it over here so that we can look at what you have. I think that this avoids the problem that you articulated, Senator King.

SENATOR GORDON: I want to express perhaps the same concern that was framed by Senator King. I appreciate very much the speech you made about cooperation and this body taking its rightful place as a partner at the table in resolving the decision and resolving the Claremont II dilemma that we are faced with. My concern with this is that we are sending out a message before the House has even had an opportunity to organize, before we even know who the speaker of the House is going to be. I would much prefer that the president of the Senate walk over to the speaker's office, whoever that might be, and say that we need to put together rules that will enable us to solve this problem before we start making demands upon the House. I think that would be the more cooperative approach in this matter, rather than us meeting the very first day and sending them a message that says, in essence, we don't like what you are doing before we even know what you are doing. The other thing is that there are many of us that are working right now on trying to come together with a solution on the Claremont Decision. I am certainly not waiting and I would hope that no one else in this body waits until we get a bill from the House to try and put together a resolution. I really don't see the need for this. Again, I don't want to look like I am not cooperative and I probably will vote for this just out of the spirit of cooperation because I don't want to start off the session looking non-cooperative, but I guess I am having a very difficult time seeing why there is a need to do this, Mr. President.

SENATOR D'ALLESANDRO: I rise in support of Senator Trombly's resolution. I don't think that it in any way manifests a point of non-cooperativeness. What it says clearly and succinctly is that there is a problem and we want to deal with that problem expeditiously and we want the cooperation of the House in doing that. I think that it is a good statement. It is a statement that is a valid one. I think that it manifests the responsibility that we have for solving this problem. The state of New Hampshire needs a solution, and it needs it expeditiously, and it needs cooperation from both the House and the Senate. All money bills do originate in the House so I think that it is a clear and succinct message that a) we want to cooperate but we want to cooperate expeditiously and things have to be done on time and not at the 11<sup>th</sup> hour. The 11<sup>th</sup> hour causes consternation for everyone and usually bad things result when that happens. Thank you, Mr. President.



SENATOR LARSEN: I rise to support the resolution. What it sets forth is an orderly progression, a very logical progression for addressing the issue of resolving the Claremont lawsuit. It sets forth a logical progression being that one-month in the House and one month in the Senate and the following month to go to a Committee of Conference and do the final deliberations between the two bodies. It is not meant to be a challenge to the House anymore than suggesting an orderly process by which we can come to some resolution. I would assume the House would take it in the manner, in which it is offered, which is in the spirit of cooperation and a proposal for a procedure that will work.

SENATOR DISNARD: Mr. President, as the Senator representing Claremont, which bears the name of this suit, I wish to thank Senator Trombly for introducing his resolution and I would hope that we might have the unanimous approval of the Senators to show our voters that we understand that there is a problem out there and we will work towards solving it.

SENATOR COHEN: I too, would like to urge support for this resolution here and thank Senator Trombly for doing this. We all know that the last Senate session was marked by ducking this issue. The voters of the state of New Hampshire recognized this and I think that is one of the reasons that we have some changes here today. We cannot afford to duck this anymore. We have a timetable here. Let's do what we can to expedite addressing this issue. This will help expedite it and do what the voters expect us to do and that is to face this head on and as quickly as possible so that we can do it within the prescribed timeframe.

SENATOR FRANCOEUR: I think that Senator Gordon has put it so eloquently. I believe that today is not the appropriate time to tell the House what to do and how to do it, especially where today is their organization and I think that within the next hour before they even know who their next leader is. I also believe that at this time, that the House is fully aware of the Claremont Decision and has been working on it just as much as the Senate. At this time, I know that there are a lot of people in the Senate that were not happy with the way that things went last year, but I don't think that anybody skated the subject and it was an important subject to the Senate and it was dealt with on both sides. To send them a message that they have to...that we would like to see this come back here, I think, is only setting up a dialogue back and forth is going to create problems for the next two years and to start this way, I don't think is a good way. Thank you, Mr. President.

SENATOR FERNALD: I rise in support of this resolution. I think that Senator Francoeur has mischaracterized it, we are not trying to tell the House what to do, and we are trying to send a message to the House and to the people of the state that we are ready to work on this issue. I would like to point out in addition to the Supreme Court order that I received frantic communication from people in my district that school bonds that are scheduled to be floated in January cannot be floated and these are not tax anticipation notes, these are to build schools and that were voted on and approved a year and a half ago and everything may grind to a halt. We need to act and act quickly and I think that the resolution is perfectly right.

SENATOR MCCARLEY: I just want to be brief. I think that it is also important that in hearing this message to the House and I don't believe that it is telling the House how to do its business at all, but I think that

it is "suggesting" that maybe we better be starting tomorrow. I don't think that we have time to spend the month of December and I think given the Sense of the Senate that we think that it is critical enough that we all look at our rules and we all figure a way immediately to get to work on this. I think that is all that it really is asking and I would hope that we would be able to unanimously support sending it over.

SENATOR FRASER: I rise in opposition to the proposed resolution for a whole different reason. You have a date in there, February 19, 1999. It just strikes me that by embracing something like this we are taking some of the prerogative away from the president of the Senate and the Speaker of the House, whoever that may be. They should set the timeframe. Now, hopefully, the Senate President in his wisdom, would say, look, we expect that you will have something into the Senate by that February date, but for us to send a resolution over to the House, I think, sends a wrong message. I for one will vote against it. Thank you, Mr. President.

SENATOR JOHNSON: Just quickly, Mr. President. I think that this resolution would be telling the House body that they don't get the message and I don't think that is the case. I think that they have the message. I know what they have to do and I think that they will do it in an expeditious manner. I just don't feel that this is necessary. Thank you.

**Adopted.**

### **SUSPENSION OF THE RULES**

Senator Below moved that rules of the Senate be so far suspended as to allow an introduction of Senate Concurrent Resolution 1 today, that the rules be further suspended to dispense with the referral to committee, notice in the calendar, hearing and report of committee and that the resolution be on second reading at the present time.

**Adopted by the necessary 2/3 vote.**

Senator Below offered the following Resolution:

### **1999 SESSION**

99-0417

03/09

### **SENATE CONCURRENT RESOLUTION 1**

**A RESOLUTION** urging the supreme court to issue a prompt ruling on certain specific issues transferred to the court by the public utilities commission on February 20, 1998.

**SPONSORS:** Sen. Below, Dist 5; Sen. F. King, Dist 1; Sen. Cohen, Dist 24; Sen. Johnson, Dist 3; Rep. Bradley, Carr 8; Rep. Chandler, Carr 1; Rep. Burling, Sull 1

**COMMITTEE:** [committee]

### **ANALYSIS**

This senate concurrent resolution urges the supreme court to issue a prompt ruling on certain specific issues transferred to the court by the public utilities commission on February 20, 1998.



99-0417

03/09

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine*

A RESOLUTION urging the supreme court to issue a prompt ruling on certain specific issues transferred to the court by the public utilities commission on February 20, 1998.

Whereas, the general court found, when enacting chapter 129 of the laws of 1996, restructuring the electric utility industry, now codified at RSA 374-F: that New Hampshire has the highest average electric rates in the nation; that there is a wide rate disparity in electric rates both within New Hampshire and as compared to the region; that New Hampshire's extraordinarily high electric rates disadvantage all classes of customers; and that these high rates are a significant impediment to economic growth and new job creation in this state; and

Whereas, in order to remedy this problem, and to bring electric rates in New Hampshire in line with the rates in other New England states, the general court directed the public utilities commission to require the implementation of retail choice of electric suppliers no later than July 1, 1998; and

Whereas, implementation of retail choice of electric suppliers includes authority by the public utilities commission to address claims for stranded costs; and

Whereas, in the intervening 2-1/2 years, electric rates in this state have remained extraordinarily high, and the disparity between rates in New Hampshire and rates in other New England states has increased dramatically due to rate reductions and the implementation of retail competition in neighboring states; and

Whereas, implementation of retail competition in much of the state has been blocked due to litigation by the largest utility in the state; and

Whereas, the public utilities commission petitioned the supreme court to rule on certain key disputed legal issues relating to the commission's authority to address claims for stranded costs in order to implement retail choice of electric suppliers, now designated as case number 98-114; and

Whereas, these issues have been briefed and argued before the supreme court by Public Service Company of New Hampshire, the state, and representatives of consumer interests; and

Whereas, the supreme court has not yet issued an opinion on these issues; and

Whereas, implementation of retail competition in the state's largest service territory cannot proceed until these legal issues are resolved; and

Whereas, the opinion of the supreme court may necessitate further legislative action before retail competition can proceed; and

Whereas, the deadline for filing legislation for the 1999 session is nearly upon us; now, therefore, be it

Resolved by the Senate, the House of Representatives concurring:

That the general court of New Hampshire respectfully requests that the New Hampshire supreme court extend the highest possible priority to

the issuance of an opinion on the issues before the court in case number 98-114 relating to the Public Utility Commission's authority to address claims for stranded costs; and

That copies of this resolution, signed by the president of the Senate and the speaker of the House of Representatives, be forwarded by the Senate clerk to the justices of the supreme court, to the clerk of the supreme court, to the governor, to the attorney general, and to the public utilities commissioners.

SENATOR BELOW: I guess this just needs to go to third reading and passage as I think that all of the members are aware and that this has strong bipartisan and bicameral support. It is simply a resolution to urge the Supreme Court to go ahead and issue a ruling on questions that were put to them by the Public Utilities Commission last February 20 and were heard before the court last May. They are questions that we need answers to in order to proceed with the question of how to deal with the settlement proposal from PSNH.

**Adopted unanimously.**

**Ordered to third reading.**

SENATOR COHEN (Rule #44): As we are all aware, there has been a great deal of confusion over District 16 election. This election turned on voter confusion because of the current state law that creates and preserves confusion. As a result, there was a serious question between a hearing for the absolute letter of the law on one hand and the clarified will of the people on the other. The Ballot Law Commission in their decision indicated their grave concern over how the ballots were counted. I would like to read directly from their decision. "The testimony heard by the commission revealed that there is considerable confusion and misunderstanding among candidates and local election officials regarding the proper counting of straight ticket ballots. Several witnesses suggested that the layout of the ballots and the instructions to the voters be modified to avoid this confusion. The commission shares these concerns and has voted to ask the Secretary of State to recommend to the legislature changes in the law to clarify and simplify voting procedures, as he deems necessary. These could include the use of a different ballot for straight ticket voters, better instructions to the voter or elimination of the straight ticket voting all together." In light of this, I strongly urge the Senate to move beyond partisanship and work together to assure that the unquestioned will of the people prevails. We have the power and the responsibility to lift the veil of doubt, which does exist to finally address and rectify this problem. The Ballot Law Commission has pleaded with this body on several occasions to eliminate all passed legislation to clarify how straight ticket ballots are cast so that the will of the people will not be in question. As of today, it is. The people of this state deserve the right to have full confidence in our electoral process and to ensure that their will is not thwarted by a system, which is so clearly in need of repair. I urge my colleagues, democrat and republican - let's work together to address this problem to make sure that it is the will of the people that prevails. Thank you.

### **HOUSE MESSAGE**

The House of Representatives has organized and has elected its officers:

Speaker of the House: Representative Donna Sytek.

Clerk of the House: Karen Wadsworth.

Assistant Clerk of the House: Leo J. Callahan.  
Sergeant-At-Arms: Robert Johnson.

### HOUSE MESSAGE

The House of Representatives is organized and ready to meet with the honorable Senate in Joint Convention for the purpose of electing a state treasurer and a secretary of state.

### RESOLUTION

Senator Squires moved that be it **RESOLVED**, to meet in Joint Convention for the purpose of electing the secretary of state, state treasurer and for canvassing votes for the governor and council.

**Adopted.**

**In recess for Joint Convention.**

**Out of Recess.**

### ANNOUNCEMENTS

Senator Trombly moved that the Senate having organized and completed its business of the day that we now adjourn until convening day, Wednesday, January 6, 1999 at 10:00 a.m.

**Adopted.**

### LATE SESSION

#### Third Reading and Final Passage

**99-0417**

**SCR 1**, urging the supreme court to issue a prompt ruling on certain specific issues transferred to the court by the public utilities commission on February 20, 1998. (Sen. Below, Dist. 5; Sen. F. King, Dist. 1; Sen. Cohen, Dist. 24; Sen. Johnson, Dist. 3; Rep. Bradley, Carr. 8; Rep. G. Chandler, Carr. 1; Rep. Burling, Sull. 1)

Senator Johnson moved that the business of the day being completed, that the Senate now adjourn until Wednesday, January 6, 1999 at 10:00 a.m.

**Adopted.**

**Adjournment.**

### SENATE STANDING COMMITTEES

#### BANKS

Leo W. Fraser, Jr., CH  
Mark Fernald, VC  
Clesson J. Blaisdell  
George F. Disnard  
Arthur P. Klemm, Jr.  
Richard L. Russman  
Rick A. Trombly  
Katherine W. Wheeler

#### CAPITAL BUDGET

Sylvia B. Larsen, CH  
Lou D'Allesandro, VC  
Burton J. Cohen  
Edward M. Gordon  
Beverly A. Hollingworth

John A. King  
Deborah B. Pignatelli  
Richard L. Russman  
Katherine W. Wheeler

### **EDUCATION**

Caroline McCarley, CH  
John A. King, VC  
Burton J. Cohen  
Lou D'Allesandro  
George F. Disnard  
Edward M. Gordon  
Carl R. Johnson  
Sylvia B. Larsen  
James W. Squires

### **ENERGY & ECONOMIC DEVELOPMENT**

Frederick W. King, Sr., CH  
Clifton C. Below, VC  
Burton J. Cohen  
George F. Disnard  
Beverly Hollingworth  
Carl R. Johnson  
Sheila Roberge  
Leo Fraser

### **ENROLLED BILLS**

Mark Fernald, CH  
Mary E. Brown, VC  
Lou D'Allesandro  
George F. Disnard  
Gary R. Francoeur  
Patricia Krueger

### **ENVIRONMENT**

Richard L. Russman, CH  
Burton J. Cohen, VC  
Clifton C. Below  
Lou D'Allesandro  
Carl R. Johnson  
Patricia Krueger  
Debora B. Pignatelli  
Katherine W. Wheeler

### **EXECUTIVE DEPARTMENTS AND ADMINISTRATION**

Burton J. Cohen, CH  
Gary R. Francoeur, VC  
Mary E. Brown  
Lou D'Allesandro  
Sylvia B. Larsen  
Sheila Roberge  
Rick A. Trombly

### **FINANCE**

Beverly A. Hollingworth, CH  
Frederick W. King, Sr., VC  
Clifton C. Below  
John A. King

Arthur P. Klemm, Jr.  
 Sylvia B. Larsen  
 Caroline McCarley  
 James W. Squires

### **INSURANCE**

Katherine W. Wheeler, CH  
 Clesson J. Blaisdell, VC  
 Gary R. Francoeur  
 Leo W. Fraser, Jr.  
 Beverly A. Hollingworth  
 John A. King  
 Caroline McCarley  
 James W. Squires

### **INTERNAL AFFAIRS**

Lou D'Allesandro, CH  
 Arthur P. Klemm, Jr., VC  
 Clifton C. Below  
 Gary R. Francoeur  
 Leo W. Fraser, Jr.  
 Debora B. Pignatelli  
 Rick A. Trombly

### **INTERSTATE COOPERATION**

Carl R. Johnson, CH  
 Mark Fernald, VC  
 Clifton C. Below  
 Mary E. Brown  
 George F. Disnard  
 Gary R. Francoeur  
 Debora B. Pignatelli

### **JOINT FACILITIES**

Clesson J. Blaisdell  
 Carl Johnson  
 Beverly Hollingworth  
 Frederick W. King, Sr.  
 John A. King  
 Sylvia B. Larsen

### **JOINT FISCAL**

Clesson J. Blaisdell  
 Beverly Hollingworth  
 Frederick W. King, Sr.  
 John A. King  
 Sylvia B. Larsen

### **JUDICIARY**

Debora B. Pignatelli, CH  
 Edward M. Gordon, VC  
 Mary E. Brown  
 Burton J. Cohen  
 Mark Fernald  
 James W. Squires  
 Rick A. Trombly  
 Katherine W. Wheeler



**PUBLIC AFFAIRS**

Rick A. Trombly, CH  
George F. Disnard, VC  
Patricia Krueger  
Caroline McCarley  
Sheila Roberge  
Richard L. Russman  
Katherine W. Wheeler

**PUBLIC INSTITUTIONS, HEALTH AND HUMAN SERVICES**

James W. Squires, CH  
Katherine W. Wheeler, VC  
Mark Fernald  
Edward M. Gordon  
Patricia Krueger  
Caroline McCarley  
Debora B. Pignatelli

**SENATE RULES**

John A. King, CH  
Debora B. Pignatelli, VC  
Clesson J. Blaisdell  
Burton J. Cohen  
Beverly Hollingworth  
Carl R. Johnson  
Frederick W. King, Sr.  
Sylvia B. Larsen

**TRANSPORTATION**

Edward M. Gordon, CH  
Sheila Roberge, VC  
Clifton C. Below  
Caroline McCarley  
Debora B. Pignatelli  
Richard L. Russman  
Rick A. Trombly

**WAYS AND MEANS**

Clifton C. Below, CH  
Leo W. Fraser, Jr., VC  
Mary E. Brown  
Lou D'Allesandro  
Mark Fernald  
Beverly Hollingworth  
Frederick W. King, Sr.  
John A. King

**WILDLIFE & RECREATION**

George F. Disnard, CH  
Rick A. Trombly, VC  
Lou D'Allesandro  
Arthur P. Klemm, Jr.  
Patricia Krueger  
Caroline McCarley  
Sheila Roberge  
Katherine W. Wheeler

January 6, 1999

### CONVENING DAY

The Senate met at 1:00 p.m.

A quorum was present.

SENATOR BLAISDELL: I just want to say a couple of words for those of you who could not attend the services for Pat Fraser. It was a beautiful ceremony. Leo, Jr., Senator Fraser's son, gave a tribute to his mother that I am certain that she must be smiling over right now. As I drove home that day, I was thinking that my wife Peggy and I, had the privilege and an honor to have met such a beautiful lady. I have tried to put in mind just few words that really could say to you what that young man said about his mother. It is very hard because the tribute that he gave her was out of this world and, Leo, you must have been very, very proud of your son. So I thought about some things that could maybe express what my wife, Peggy and myself feelings were for Pat and I am sure yours. There was a quote that said "I expect to pass through this world but once. Any good thing, therefore, that I can do, or any kindness that I can show to any fellow-creature, let me do it now, but no deferring from it or neglect it for I shall not pass this way again." I think that really says it all about what that young man said about his mother and what Pat Fraser was to all of us. Thank you. Reverend Jones, would you please say a few words?

The prayer was offered by the Rev. David P. Jones, Senate Chaplain.

*Sometimes when someone that we have loved finishes their life among us, although I believe that it goes on, we are reminded of what really matters and what really matters are the people in our lives and the relationships. Issues of politics, policy and legislation are very important but they are not all that important unless they touch the people that we are called to care about. In the face of death, there is really nothing that we can do except to be silent, so let us in thanksgiving for Pat's life and for her family and for the strength that she has been to Leo and will continue to be, let us just be silent for just a moment. Thank you.*

*Lord, we thank you for the life of this good woman now completed on earth and we thank you for the fingerprints which she has left upon our souls. Help us to be worthy of her care and to represent her in the time that remains to us. Amen. She would be the first to say, "let's get on with it?" Right Leo? So let's get on with it.*

*Good morning, leaders. Are you ready to lead? It is what we are all waiting for and hoping for. Each of you has three different places from which you can choose to lead, depending on where you position yourself within this body. You can lead from behind, driving the sometimes-reluctant herd on ahead toward safety. The advantage to this approach is that you can see if the cattle are making progress, are staying together, or wandering or suddenly lying down. The disadvantage of leadership from behind is that if you aren't careful, the herd can end up leading you. You can choose to lead from the middle, from the center of the pack. It is not always easy to know where the middle really is, but if you can find it, from there you can best sense the mood and desires of your followers. The disadvantage of center leadership is that you can forget those many that are on the fringes. Sometimes they are the only ones who can see beyond the pack and besides, the fringe folks are part of your responsibility too. And of course, you can lead like a shepherd, from our front of the flock.*

*From this lead position, no obstacle will obscure your view of the path ahead, and as long as you know the right way to go, that is okay. But don't forget to look behind you every now and then, for out front leaders are always in danger of getting so far beyond their flock that they end up leading no one but themselves. So pick your place and lead us on.*

Let us pray:

*Lord of every position there is, gently prod our leaders from behind when they lag; patiently walk beside them that they may stay close throughout this journey and move on ahead of them so that they may have to strain and stretch and struggle to keep up with you — for you are the only One who really knows where we need to be headed. Amen*

Senator F. King led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS

### PRESIDENT'S STAFF

Carol Pletcher, Chief of Staff - Administration

Bob Quinn, Chief of Staff - Policy

Donna Morin, Administrator to Leadership

Margaret Fitz, Receptionist/Secretary

### REPUBLICAN LEADERSHIP STAFF

Doreen Sumner, Executive Secretary/Administrator

### MAJORITY LEADERSHIP STAFF

Jacqueline Clark, Executive Secretary/Administrator

### CLERK'S STAFF

Angela Lavoie, Calendar Clerk

Brenda Mento, Journal Clerk

Robert A. Gagne, Senate Recorder

Rosalie Brooks-Patch, Secretarial Supervisor

### COMMITTEE STAFF

Secretaries: Anna Maria Tsorvas, Laurel Gallant-Hanlon, Kristiana Dudley, Debra Cantara, Marguerite Olbertz, Merideth Chandler, Cynthia Wescott, Linda Brosseau

### CORRESPONDENCE SECRETARIES

Woody Alosa, Jennifer Lucic

### COMMITTEE RESEARCH

June Goulson, Director

Carolyn Johnson

Elaine Rapp

### FINANCE & CAPITAL BUDGET COMMITTEE

Patricia Waldvogel, Administrative Assistant

Marlene Taylor, Executive Secretary

### LEGISLATIVE AIDES

Michael Kitch

Jonathan Page

Shannon Gorrell

Megan Konys

Susan Duncan

### SENATE INTERNS

Maria Proulx

Tara Bachrach



Amy Ellen Starkweather  
 Gabriel Gilman  
 Joanna Antosz  
 Kathryn Sullivan  
 Kevin Mooney  
 Ed Hebert  
 Cynthia Lynne Panish  
 Rob Gile

### HOUSE MESSAGE

The House of Representatives is ready to meet with the honorable Senate in Joint Convention for the purpose of canvassing the votes for governor and executive council.

**In recess for Joint Convention.**

**Out of Recess.**

Senator J. King offered the following:

### SENATE RULE CHANGES

#### PROPOSED AMENDMENT TO SENATE RULE #2

Approved by Senate Rules Committee 12/15/98

*No member shall hold conversation with another while a member is speaking in debate, **or use electronic devices, including but not limited to personal computers, and telephonic devices, without leave of the Senate***

#### PROPOSED AMENDMENT TO SENATE RULE #17-A (a)&(b)

Approved by Senate Rules Committee 12/15/98

***17-A** (a) The Office of Legislative Services shall not draft a Senate bill or joint resolution, other than the general appropriations (budget) bill or the capital budget bill, **or bills concerning the Claremont Decision: Docket #97-001, unless a request by a member for drafting with complete information has been received not later than 5:00 p.m. on Friday, January 8, 1999.***

(b) Every Senate bill and joint resolution, except the general appropriations (budget) bill or the capital budget bill, or bills concerning the Claremont Decision: Docket #97-001, must be signed off in Legislative Services by 5:00 p.m., on **Friday, January 22, 1999.**

#### PROPOSED AMENDMENT TO SENATE RULE #22 & 22-(a)

Approved by Senate Rules Committee 12/15/98

***22.** A hearing shall be held upon each bill referred to a committee, and notice of such hearing shall be advertised at least (present 7 days) **5 days** before hearing in the Senate Calendar. The Senate Calendar shall be available on the World Wide Web for viewing as soon as it has been released for printing.*

(a) All bills in the possession of committees shall be reported out with one of the following recommendations: ought to pass, ought to pass with amendment, **re-refer to committee**, inexpedient to legislate, or refer for interim study. Refer for interim study shall be a committee report only in the second year.

#### PROPOSED AMENDMENT TO SENATE RULE #27

Approved by Senate Rules Committee 12/15/98

***27.** The standing committees of the Senate shall be as follows: The Committee on Finance, Committee on Capital Budget, Committee on Ways*

& Means, Committee on Banks, Committee on (present Economic Development) **Energy and Economic Development**, Committee on Education, Committee on Environment, Committee on Executive Departments & Administration, Committee on Wildlife & Recreation, Committee on Insurance, Committee on Internal Affairs, Committee on Interstate Cooperation, Committee on Judiciary, Committee on Public Affairs, Committee on Public Institutions Health & Human Services, Committee on Rules & Enrolled Bills, and the Committee on Transportation.

**Adopted.**

### **RULES OF THE SENATE**

1. Determination of quorum; correction of Journal.
2. Members, decorum of.
3. Members, conduct when speaking.
4. Members not to speak more than twice.
5. President shall recognize whom.
6. Questions of order, appeal.
7. Member, absenting himself.
8. Motions, order of preference.
9. Questions postponed indefinitely not acted upon in same biennium.
10. Questions, when divided.
11. Objections to reading paper, how determined.
12. Roll Call, everyone must vote.
13. Galleries, clearing of.
14. Reconsideration, motion for.
15. Petitions, introduction of.
16. Bills; shall be numbered and expressed clearly.
17. Bills, introduction of.
- 17-A (a) Bills, deadlines for drafting.
- 17-b Bills, deadlines for information.
- 17-c Final deadline
18. Resolutions to be treated as bills.
19. Bills shall have three readings; progress of; time for second and third readings.
20. Bills, printing and distribution.
21. Bills amended only on second reading; filing of amendments.
22. Public hearings to be held and advertised.
23. Amended bills, printed, distributed and disposed of.
24. Appropriating money, to whom referred.
25. President to sign bills, etc.
26. Committees, appointment of.
27. Standing Committees.
28. Messages sent to House.
29. Messages, when received.
30. Voting; division of Senate.
31. Visitors to Senate.
32. Hours of meeting.
33. Rules of Senate, how suspended.
34. Rules of Senate, how rescinded.
35. Committee of the whole.
36. President may name member to chair.
37. Senate staff; composition and duties.
38. Senate staff; days of employment.
39. Committees, reports and meetings.
40. Appeal, presiding officer ruling.

41. Motions, no substitution under color of amendment.
42. Conflict of interest.
43. Committee of Conference reports.
44. Personal privilege.
45. Requisition Approval Required.
46. Fiscal notes, requirements.

### SENATE RULES

1. The President, having taken the chair, shall determine a quorum to be present. Any erroneous entry in the daily journal shall be corrected no later than the third succeeding legislative day, and the permanent journal corrected one week after the permanent journal copy is placed in the hands of the Senate.
2. *No member shall hold conversation with another while a member is speaking in debate, **or use electronic devices, including but not limited to personal computers, and telephonic devices, without leave of the Senate.***
3. Every member, wishing to speak, shall address the President and when he has finished shall, if having risen to speak, then sit down.
4. No member shall speak more than twice on the same question on the same day without leave of the Senate.
5. More than one member rising to speak at the same time, the President shall decide who shall speak first.
6. If any member transgresses the rules of the Senate, the President shall, or any member may, call him to order; in which case the member so called to order shall immediately cease and desist, and the Senate, if appealed to, shall decide the case. But if there is no appeal, the decision of the President shall be conclusive.
7. No member shall absent himself without permission from the Senate.
8. When any question is under debate, no motion shall be received but first, to adjourn; second, to lay upon the table; third, for the previous question; fourth, to postpone to a certain day; fifth, to commit; sixth, to amend; and seventh, to postpone indefinitely; which several motions shall have precedence in the order in which they are so arranged. Motions to adjourn, to lay upon the table, for the previous question, and to take from the table shall be decided without debate. Motions to postpone to a certain day shall be debatable both as to time and subject matter. No motion to postpone indefinitely, to postpone to a certain day, or to commit, being decided, shall be in order at the same stage of the bill or resolution, until after adjournment.
9. A question which is postponed indefinitely shall not be acted upon during the biennium except whenever two-thirds of the whole number of elected Senators shall on division taken, vote in favor thereof. Any bill which is indefinitely postponed shall not be reintroduced under cover of an amendment to the general appropriations (budget) bill. No motion to suspend this rule shall be permitted.
10. Any member may call for a division of the question when the sense will admit it. Unless otherwise specifically provided for, a majority of those present and voting shall be required to pass any vote.
11. When the reading of a paper or document is objected to by a member, the question shall be determined by a vote of the Senate; and without debate.

12. When the nays and yeas have been moved by a member and duly seconded by another member, each member present shall declare his assent or dissent to the question, unless for special reason he be excused by the Senate. The names of the persons so making the motion and the second shall be recorded in the Journal. A member who is to be absent when the yeas and nays are required may pair his vote with another member, to be present or also to be absent, who intends to vote on the opposite side of the question. Pairs shall be permitted only if the yeas and nays are taken on such question. Both members shall file such pair in writing with the Clerk before the question is put. In all cases of pairing, the vote of neither member shall be counted in determining the result of the roll call; but the Clerk shall announce all pairs and enter them in the Journal. The President shall determine the order of the roll call. No member shall be required to vote in any case where he was not present when the question was put.
13. In case of any disturbance or disorderly conduct in the gallery, the President shall have the power to order the same to be cleared. The Chairman of the Committee of the Whole may restrict attendance to the duly elected Senators.
14. No vote shall be reconsidered, unless the motion for reconsideration be made by a member who voted with the prevailing side, nor unless the notice of such motion be given to the Senate in open session prior to adjournment on the same day on which the vote as passed, or on the next day on which the Senate shall be in session within one half hour after the convening of the early session, and any such notice of reconsideration shall be effective for three legislative days only and thereafter shall be null and void.
- 14 (a) Reconsideration of any bills subject to a transfer date established by joint rules must be acted on or before the joint rule deadline, and thereafter shall be null and void.
15. Before any petition shall be received and read, a brief statement of the contents thereof shall be made by the member introducing the same.
16. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced in the Senate, shall be endorsed with the name of the Senator presenting them, and with the subject matter of the same. Every bill shall be marked on the first page "Senate Bill" and numbered serially; every joint resolution shall be marked "Senate Joint Resolution" and numbered serially; every concurrent resolution proposing a constitutional amendment shall be marked "Concurrent Resolution Proposing a Constitutional Amendment" and numbered serially; and every other concurrent resolution shall be marked "Senate Concurrent Resolution" and numbered serially, as each bill or resolution is introduced into the Senate.
17. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced into the Senate shall be delivered or caused to be delivered to the Office of Legislative Services, which in turn will submit it to the sponsor for his signature, and then to the Clerk by Legislative Services. If requested by the sponsor, a proposed bill, resolution or petition shall not be made public, except by the sponsor, until signed by the sponsor. During any adjournment the President may receive bills and resolutions for printing and for reference to committee, provided that no bill shall



have a public hearing until it is formally introduced into the Senate printed and available for distribution. The President shall take up all bills and resolutions for introduction at the early session.

**17-A** (a) The Office of Legislative Services shall not draft a Senate bill or joint resolution, other than the general appropriations (budget) bill or the capital budget bill, **or bills concerning the Claremont Decision: Docket #97-001**, unless a request by a member for drafting with complete information has been received not later than 5:00 p.m. on **Friday, January 8, 1999**.

(b) Every Senate bill and joint resolution, except the general appropriations (budget) bill or the capital budget bill, or bills concerning the Claremont Decision: Docket #97-001, must be signed off in Legislative Services by 5:00 p.m., on Friday, January 22, 1999.

(c) Notwithstanding the provisions of 17 (a), (b), and (c), a Senate bill, Senate joint resolutions, or Senate concurrent resolution may be accepted by Legislative Services for drafting and introduced into the Senate at any time prior to the deadline established by Joint Rules for the transfer of bills out of the first body if approved by either a majority of the Senate Rules Committee or a two-thirds vote on the floor.

(d) No bill the subject matter of which has been indefinitely postponed or made inexpedient to legislate in the Senate in the first-year session shall be admitted into the second-year session whether as a bill, an amendment, a committee of conference report or in any other manner;

(e) Legislation returned from the non-originating body, with an amendment, shall not be re-referred to Committee but shall have one of the following recommendations: Concur, Nonconcur, Nonconcur and Request a Committee of Conference.

#### **17-B Committees of Conference.**

(a) Whenever there be any disagreement between the Senate and the House on the content of any bill or resolution, and whenever both bodies, voting separately, have agreed to establish a committee of conference, the President of the Senate shall appoint three members to the Senate conference committee on the bill and the Speaker of the House shall appoint four members to the House conference committee. Exceptions: (1) the House committee of conference on the operating budget shall consist of five members; (2) the number of the members of the committees of conference on any bill may increase or decrease if the President and the Speaker both agree. The two committees of conference on a bill shall meet jointly but vote separately while in conference. A unanimous vote by both committees of conference shall be necessary for an agreed report to the Senate and the House by the committees of conference.

(b) The first-named person from the body where the bill or resolution in disagreement originated shall have the authority to call the time and place for the first meeting of the committees of conference on said bill.

(c) The first-named person on a committee of conference shall be the chairman of that conference. The chairman of the committee of conference of the body where the bill or resolution in disagreement originated shall chair the joint meeting of the committees of conference.

(d) No action shall be taken in either body on any committee of conference report earlier than some subsequent day, after the report has been delivered to the seats or placed on a member's desk. A committee of conference may neither change the title of any bill submitted to it nor add amendments which are not germane to the subject matter of the bill as originally submitted to it.

(e) Conference Committees on Budget Bills. The report of each committee of conference on either the general appropriation bill, or the capital improvements bill shall be printed in the journal or a supplement thereto of the appropriate body before action on said report is taken on the floor. Non-germane amendments, sections and footnotes to such bills (except footnotes in explanation of the principal text of such bills or designating the use or restriction of any funds or portions thereof) are prohibited and shall not be allowed under any circumstances. Notwithstanding the general provisions of paragraph (h) of this section, the Conference Committee on general appropriations bill may propose new items for inclusion in said bill but no such item may be so included unless and until it shall have been returned to both the Senate and the House and adopted in identical form by a majority vote in each body.

(f) When both committees of conference on a concurrent resolution proposing an amendment to the constitution have agreed, the committee of conference from the body which acceded to a request for committees of conference shall file its report with the clerk of that body who shall print it in full in the journal or supplement of that body. The report shall be made a special order of business at the late session of a subsequent day. After said report has been adopted by the first body, a message shall be transmitted to the second body which shall then act upon the report of its committee of conference.

(g) A sponsor of any bill or joint resolution referred to committees of conference shall, upon his request, be granted a hearing before said committees prior to action thereon.

(h) No member of a committee of conference shall sign any report that contains non-germane amendments or subject matter that has been indefinitely postponed in either body. For the purposes of this rule, a non-germane amendment would be any subject matter not contained in either the House or the Senate version of the bill.

18. All resolutions which may require the signature of the Governor shall be treated in the same manner as bills.
19. Every bill shall have three readings in the Senate previous to its passage. The first and second readings shall be by title only which may be accomplished by a conglomerate resolution, after which the bill shall be referred by the President to the appropriate committee and shall be printed as provided in Rule 20, unless otherwise ordered by the Senate. No bill after it has been read a second time shall have a third reading until after adjournment from the early session. The time assigned for the third reading of bills and resolutions shall be in the late session unless otherwise ordered by the Senate. The orders of the day for the reading of bills shall hold for every succeeding day until disposed of.
20. After every bill shall have been read a second time, and referred by the President to the appropriate committee, the Clerk shall procure a sufficient number of copies, printed on paper of uniform size, for

the use of the legislature, and cause the same to be distributed to the members, and when printed the bill shall be immediately delivered to the committee to which it shall have been referred. Bills received from the House shall be printed at the same stage of their procedure unless they have been printed in the House and copies distributed in the Senate, in which case any amendment made by the House shall be duplicated and distributed in the Senate.

21. No amendment shall be made but upon the second reading of a bill; and all amendments to bills and resolutions shall be in writing, with the name of the Senator and the district he represents thereon. No amendment to any bill shall be proposed or allowed at any time or by any source, including a committee of conference, except it be germane. Amendments shall have been reviewed by the Office of Legislative Services for form, construction, statutory and chapter reference.
22. A hearing shall be held upon each bill referred to a committee, and notice of such hearing shall be advertised at least (present 7 days) **5 days** before hearing in the Senate Calendar. The Senate Calendar shall be available on the World Wide Web for viewing as soon as it has been released for printing.
  - (a) All bills in the possession of committees shall be reported out with one of the following recommendations: ought to pass, ought to pass with amendment, re-refer to committee, inexpedient to legislate, or refer for interim study. Refer for interim study shall be a committee report only in the second year.
  - (b) Any legislation creating a chapter study committee shall have membership limited to members of the General Court.
23. When a bill is reported favorably with an amendment, the report of the committee shall state the amendment, and then recite the section of the bill in full as amended. The amendment shall be printed in the calendar of the Journal on the date that the report is listed for action. If no action is taken on that day, then the amendment shall be printed on the day to which the bill has been referred. All bills reported shall be laid upon the table and shall not be finally acted upon until the following legislative day, and a list of such bills with the report thereon shall be published in the Journal for the day on which action shall be taken.
24. Every bill and joint resolution appropriating money, which has been referred to another committee and favorably accepted by the Senate, shall be committed to the Finance Committee for review. If any such bills have been referred jointly to the Finance Committee and another standing committee, the Finance Committee may report separately and a further public hearing may be held at the discretion of the Finance Committee. All bills appropriating money, which are referred directly to the Finance Committee shall have a hearing. Any bill which has been referred to another committee and favorably accepted by the Senate, which has an economic impact on the state may be referred to the Committee on Economic Development for review. The Committee on Economic Development may hold a further public hearing at the discretion of the Committee.
25. All warrants, subpoenas and other processes issued by order of the Senate shall be under the hand and seal of the President attested by the Clerk.



26. All committees of the Senate, including Senate members on committees of conference, shall consist of members of both parties as nearly equal as possible, provided that on all committees, both parties shall be represented. The President shall appoint the members of all committees, after consulting with the minority leader.
27. The standing committees of the Senate shall be as follows: The Committee on Finance, Committee on Capital Budget, Committee on Ways & Means, Committee on Banks, Committee on (present Economic Development) **Energy and Economic Development**, Committee on Education, Committee on Environment, Committee on Executive Departments & Administration, Committee on Wildlife & Recreation, Committee on Insurance, Committee on Internal Affairs, Committee on Interstate Cooperation, Committee on Judiciary, Committee on Public Affairs, Committee on Public Institutions Health & Human Services, Committee on Rules & Enrolled Bills, and the Committee on Transportation.
28. Messages shall be sent to the House of Representatives by the Clerk of the Senate.
29. Messages from the Governor or House of Representatives may be received at all times, except when the Senate is engaged in putting the question, in calling the yeas and nays, or in counting the ballots.
30. All questions shall be put by the President, and each member of the Senate shall signify his assent or dissent by answering yea or nay. If the President doubts, or a division is called for, the Senate shall divide. Those in the affirmative on the question shall first rise from their seats and stand until they be counted. The President shall rise and state the decision of the Senate.
31. No person except members of the executive, or members of the House of Representatives and its officers, shall be admitted to the floor of the Senate, except by the invitation of the President, or some member with his consent.
32. The Senate shall adjourn to meet on the subsequent legislative day for the early session at the time mentioned in the adjournment motion. The late session shall immediately follow the early session unless the Senate shall otherwise order.
33. No standing rule of the Senate shall be suspended unless two-thirds of the members present vote in favor thereof. This rule shall not apply to Senate Rule 9.
34. No rule shall be rescinded unless two days notice of the motion has been given and two-thirds of those present vote therefor.
35. The Senate may resolve itself into a Committee of the Whole at any time on motion made for that purpose; and in forming a Committee of the Whole, the President shall leave the chair, and appoint a chairperson to preside in committee.
36. The President when performing the duties of the Chair may, at any time, name any member to perform the duties of the Chair.
37. The staff of the Senate shall be comprised of a clerk, an assistant clerk, a sergeant-at-arms, and a doorkeeper who are to be elected by the Senate, and such other personnel as the President shall appoint. The President shall define the duties of all members of the Senate staff which are not fixed by statute or otherwise ordered by the Senate.



38. Each member of the staff of the Senate shall be available on call to carry out the work of the Senate.
39. The committees shall promptly consider and report on all matters referred to them. The President may authorize such committees having a heavy load of investigation, re-drafting, research or amendments to meet as needed on non-legislative days during the legislative session. The Clerk of the Senate shall prepare a list by number, title and sponsor of all Senate bills and resolutions in committee which have not been acted upon within one week before the deadline established for the transfer of bills and resolutions from the Senate to the House of Representatives, and he/she shall distribute this list to every member of the Senate as soon as it is prepared.
40. Any appeal from the ruling of the presiding officer shall be decided by majority vote of the members present and voting.
41. No new motion shall be admitted under color of amendment as a substitute for the motion under debate.
42. In all instances every member shall act in conformance with the duly adopted Ethical Guidelines and Opinions of the New Hampshire General Court.
43. Action on the floor of a report of the Committee on Finance or a Committee of Conference on either the general appropriations (budget) bill or the capital budget bill, shall not be taken by the Senate, until said report has been available from the Senate Clerk twenty-four hours in advance, in written form. Nongermane amendments and footnotes to such bills (except footnotes in explanation of the principal text of such bills or designating the use or restriction of any funds or portions thereof) are prohibited and shall not be allowed under any circumstances.
44. **PERSONAL PRIVILEGE:** A Senator may, as a matter of personal privilege, defend his/her position on a bill, his/her integrity, his/her record, or his/her conduct, against unfair or unwarranted criticism, or may speak of an issue which relates to his/her rights, privileges or conveniences as a Senator; provided, however, the matters raised under personal privilege shall not be subject to questioning, answer, or debate, by another Senator. Personal Privilege remarks may be included in the Daily Journal if requested by the Senator, and in the Permanent Journal by vote of the Senate. A Senator may speak on other matters of his/her choosing and in such cases may be subject to questioning and/or answer according to the Rules of the Senate.
45. No officer or employee of the Senate during the session or any adjournment thereof shall purchase or contract for the purchase, pay or promise to pay any sum of money on behalf of the Senate or issue any requisition or manifest without the approval of the Senate President.
46. If a drafting request for a bill or resolution has been filed with the office of Legislative Services requiring a fiscal note as provided in RSA 14:44-47, the substance or a draft of the proposal may be provided to the legislative budget assistant for preparation of the required fiscal note without the specific consent of the sponsor of the proposal, provided that the identity of the sponsor shall not be disclosed.

### HOUSE MESSAGE

The House of Representatives has passed a bill with the following title, in the passage of which it asks the concurrence of the Senate:

**HB 100-FN-L**, adopting certain interim provisions as a result of the Claremont decision to enable municipalities to continue to fund education.

### INTRODUCTION OF BILLS

Senator Hollingworth moved that **HB 100-FN-L**, adopting certain interim provisions as a result of the Claremont decision to enable municipalities to continue to fund education, having passed the House and in possession of the Clerk, be by this resolution introduced to the Senate.

**Adopted.**

### SUSPENSION OF THE RULES

Senator Hollingworth moved that the Rules of the Senate be so far suspended as to dispense with the referral to committee, a five-day Calendar notice and a hearing. A hearing by the committee, Calendar notice as to the action of the committee and a floor date and that **HB 100-FN-L**, adopting certain interim provisions as a result of the Claremont decision to enable municipalities to continue to fund education, on a second reading at the present time.

**Adopted by the necessary 2/3 vote.**

### First and Second Reading

**HB 100-FN-L**, adopting certain interim provisions as a result of the Claremont decision to enable municipalities to continue to fund education.

**HB 100-FN-L**, adopting certain interim provisions as a result of the Claremont decision to enable municipalities to continue to fund education. Ought to pass.

SENATOR HOLLINGWORTH: I would like to speak to you about what HB 100 does, but I would like to speak to you about what it doesn't do first. This bill does not resolve the school-funding problem. This bill does not extend the deadline for solving the problem beyond April 1. This bill simply enables municipalities to finance their public schools and to pursue their budget processes pending a resolution of the problem. This bill is a stop-gap measure effective only to April 1. Section I enables school districts to prepare their budgets and authorize's them to place articles on the warrant for raising and appropriating funds for the operation of schools. It also authorizes school districts to conduct annual meetings and to appropriate funds for operating schools in accordance with the statute and the budgetary proceedings under which they operate. In other words, this section applies to all municipalities including those operating under the provision of SB 2. Section II of the bill provides state guarantee for tax anticipation notes or TANS. The guarantees for a single municipality apply only to the total amount of tax anticipation notes issued by the municipality between January 1 and March 31, 1998, in other words, what they borrowed last year. In excess of its municipal and county tax commitment, in other words, the state guarantee applies only to the school portion of the municipal tax commitment. Municipalities which did not issue tax anticipation notes in 1998 may petition the legislature and the Fiscal Committee for a similar state guarantee in the event of compelling need. The Fiscal Committee and the governor and council will approve that amount of that guar-

antee. Section three, authorizes the state treasurer to invest in municipal obligations and to buy municipal bonds back by tax receipts. The purpose is to sustain school construction projects already underway. Section four adds municipal obligations or debt to the so-called legal list, what banks and financial institutions can purchase in the event of the power to collect school portion of the property tax to finance this debt remains in question. This enables, but does not authorize or require banks and fiscal institutions to purchase municipal debt. Again, let me stress that the provisions of this bill will expire midnight, March 31. The bill does not, I will repeat, does not extend the deadline of April 1. It is an interest measure and an emergency measure to stabilize until we resolve the problem.

SENATOR F. KING: Senator Hollingworth, am I right in understanding that in the case of the town of Pittsburg which has a project already under construction, that they will now be able to obtain permanent financing for this project?

SENATOR HOLLINGWORTH: They can go forward with their project by applying to the treasurer and she will do so on a needs basis for those communities.

SENATOR D'ALLESANDRO: Senator Hollingworth, about how many communities will be effected by this resolution?

SENATOR HOLLINGWORTH: It is part of the TANs and we have seven communities that we now recognize that borrowed before, but in the event that any community found the compelling need they could apply for it.

SENATOR FERNALD: Senator Hollingworth, I have a question based on the question that was just raised by Senator King. Section three allows additional borrowing under compelling need, which I think that you said were to fund construction projects underway. What wasn't clear to me is whether a school district can issue a tax anticipation note to carry them for a few months on their building project and then issue their final bonds later after we solve the big problem, or whether the state is going to guarantee permanent school construction loans with ten year bonds now?

SENATOR HOLLINGWORTH: No. The state is only guaranteeing those construction jobs that are now underway.

SENATOR FERNALD: But what sort of bonds are the states going to guarantee? Tax anticipation notes or ten-year construction bonds?

SENATOR HOLLINGWORTH: Section two of the bill guarantees your TANs, that is tax anticipation notes and those are the ones that are being guaranteed by that part. The bonding part is for construction projects and that is section III.

SENATOR FERNALD: And under section III is that statement a guarantee ten-year bond?

SENATOR HOLLINGWORTH: No. They are only going to guarantee for the length of the time that they have under that bill, until the problem is resolved.

SENATOR TROMBLY: Senator Hollingworth, **TAPE INAUDIBLE** recess for one reason or another. Does the vote have to be taken on the article during the timeframe in the bill or is it simply the placing of the warrant before the voters sufficient to get the guarantee to the municipalities?



SENATOR HOLLINGWORTH: All of the towns meet in March and this is covering that so that they can go forth in March and make those meetings and it will be good until April 1 or actually March 31.

SENATOR TROMBLY: If the meeting convenes let us say and there is an article in the warrant and the meeting recesses until after the deadline, would the simple placing of the article on the warrant and the convening of the meeting guarantee a protection under the bill or does the article actually have to have been voted before the deadline before the guarantee would kick into place?

SENATOR HOLLINGWORTH: I am sorry, Senator Trombly, I am not sure, but my presumption and I see Fred King has his hand up. My presumption is that this allows them to place it on the warrant, to vote on it and to take action on it and that would carry them up until March 31. If we have not resolved the problem, then everything has gone out the window.

SENATOR F. KING: If I might interject, I believe that what we are talking about when we talk about tax anticipation notes in the case of a town at least, it is the selectmen who authorize to borrow money in anticipation of taxes. So what this will do is simply when the selectmen deem it necessary they will go out and negotiate their normal way to contain notes and the state will guarantee those notes and that will take care of the bank's concern about the towns ability to pay in the future with an unconstitutional tax issue. So it doesn't require a town meeting, the selectmen will borrow their tax anticipation notes whenever they would normally borrow them.

**Adopted.**

**Ordered to third reading.**

Senators McCarley and K. Wheeler are in favor of HB 100-FN-L.

## **ANNOUNCEMENTS**

### **RESOLUTION**

Senator Cohen moved that the Senate now adjourn from the early session and that the business of the late session be in order at the present time and the bills ordered to third reading be read a third time by this resolution and that when we adjourn, we adjourn to January 7, 1999 at 11:00 a.m.

**Adopted.**

### **LATE SESSION**

#### **Third Reading and Final Passage**

**HB 100-FN-L**, adopting certain interim provisions as a result of the Claremont decision to enable municipalities to continue to fund education. Senator Johnson moved that the Senate now adjourn until January 7, 1999 at 11:00 a.m.

**Adopted.**

**Adjournment.**

*January 7, 1999*

### **INAUGURATION DAY**

The Senate met at 11:00 a.m.

A quorum was present.



The prayer was offered by Rev. David P. Jones, Senate Chaplain.

If what begins today with the governor's inauguration were a banquet, then Claremont would be the elephant sitting in the middle of your legislative dining room table. Deciding exactly how to carve it, serve it and consume it is your big challenge, their big challenge, and her big challenge. This task is only going to be manageable if you remember to go at it one bite at a time. The great English poet, William Blake wrote, "He who would do good to another man must do it in minute particulars." In other words, this elephant ain't goin' down in one bite. Most of life's elephants are like that. And so, as you pass through this session and through this life, remember to breathe deeply, to chew slowly, to keep your eyes open and to relish those minute particulars. Doing that is the key to making the good you came here to accomplish a real possibility rather than just another political promise.

*Lord of the details, invade the "minute particulars" of each of our lives, each of our issues and each of our dreams, that we may have the courage, the patience, the intelligence and the stomach to slay any huge dragons, to climb any high mountains and to eat any gigantic elephants that we might encounter along our life's way.* Amen

Senator Gordon led the Pledge of Allegiance.

## REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill:

**HB 100**, adopting certain interim provisions as a result of the Claremont decision to enable municipalities to continue to fund education.

Senator D'Allesandro moved adoption.

**Adopted.**

## INTRODUCTION OF GUESTS

### HOUSE MESSAGE

The House of Representatives is ready to meet with the Honorable Senate in Joint Convention for the purpose of hearing the report of the Joint Committee appointed to compare and count the votes for Governor and Councilors, and for the inauguration of the Governor-elect, the Honorable C. Jeanne Shaheen.

**In recess for Joint Convention.**

**Out of Recess.**

## ANNOUNCEMENTS

### RESOLUTION

Senator Cohen moved that the Senate now adjourn from the early session and that the business of the late session be in order at the present time.

**Adopted.**

### LATE SESSION

Senator Cohen moved that the business of the day being completed that the Senate be in recess for the sole purpose of introducing legislation, printing of bills, referring bills to committee and scheduling committee hearings and that when we adjourn we adjourn to the Call of the Chair.

**Adopted.**

Senator Johnson moved that the Senate now be in recess for the sole purpose of introducing legislation and referring bills to committees, printing of bills, and scheduling committee hearings.

**Adopted.**

**Recess.**

**Out of Recess.**

## INTRODUCTION OF SENATE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the clerk, Senate Bills numbered 11 - 43 shall be by this resolution read a first and second time by the therein listed titles, laid on the table for printing and referred to the therein designated committees.

**Adopted.**

## First and Second Reading and Referral

99-0181

**SB 11-FN**, relative to the filing fee for securities in a combined prospectus offered for sale in New Hampshire by a mutual fund. (Sen. Fraser, Dist 4; Rep. Francoeur, Rock 22: **Banks**)

99-0253

**SB 12-FN-A**, relative to the World War II memorial campaign and making an appropriation therefor. (Sen. Cohen, Dist 24; Sen. Johnson, Dist 3; Sen. F. King, Dist 1; Sen. Blaisdell, Dist 10; Sen. McCarley, Dist 6; Rep. Vaughn, Rock 35; Rep. J. Wall, Straf 9; Rep. Rosen, Belk 7; Rep. Raynowska, Rock 26; Rep. Jacobson, Merr 2: **Public Affairs**)

99-0184

**SB 13**, establishing a committee to study joint maintenance agreements in school districts. (Sen. Johnson, Dist 3: **Education**)

99-0537

**SB 14**, establishing a committee to study the financial impact of federal welfare reform on the cities and towns of New Hampshire. (Sen. D'Allesandro, Dist 20; Rep. Fraser, Merr 21; Rep. Hoadley, Merr 24: **Public Institutions, Health and Human Services**)

99-0754

**SB 15-FN-A**, creating a position within the insurance department. (Sen. Squires, Dist 12; Rep. Kurk, Hills 5: **Insurance**)

99-0891

**SB 16**, relative to revocation of wills by divorce. (Sen. Gordon, Dist 2: **Judiciary**)

99-0281

**SB 17**, relative to funeral arrangements. ( Sen Brown, Dist 17: **Public Affairs**)

99-0973

**SB 18**, relative to the rulemaking authority of the state board of education regarding certain educational personnel. (Sen. Disnard, Dist 8: **Education**)

99-0843

**SB 19**, extending the reporting date of the state substance abuse treatment delivery system committee. (Sen. Wheeler, Dist 21; Sen. Squires,

Dist 12; Rep. O'Keefe, Rock 21; Rep. Chabot, Hills 48; Rep. Flora, Hills 15; Rep. Nordgren, Graf 10; Rep. Taylor, Straf 11: **Public Institutions, Health and Human Services**)

99-0958

**SB 20**, limiting the price for resale of tickets to motor sports events at the New Hampshire International Speedway to the original purchase price. (Sen. F. King, Dist 1; Sen. Blaisdell, Dist 10; Sen. Johnson, Dist 3: **Energy and Economic Development**)

99-0925

**SB 21**, relative to domestic animals. (Sen. Wheeler, Dist 21; Sen. Roberge, Dist 9; Rep. Wendelboe, Belk 2: **Wildlife and Recreation**)

99-0914

**SB 22**, relative to the pilot program relative to the administration of medication in residential care facilities. (Sen. Wheeler, Dist 21; Rep. Emerton, Hills 7: **Public Institutions, Health and Human Services**)

99-0906

**SB 23**, urging the President and Congress to extend the Older Americans Act for a 3-year period. (Sen. Wheeler, Dist 21; Sen. J. King, Dist 18; Sen. McCarley, Dist 6: **Internal Affairs**)

99-0888

**SB 24**, extending the application of certain provisions of the child protection act to all children in out-of-home placements. (Sen. Gordon, Dist 2: **Judiciary**)

99-0885

**SB 25**, expanding the waiver of administration under the law regarding decedents' estates. (Sen. Gordon, Dist 2: **Judiciary**)

99-0881

**SB 26**, establishing a committee to study trustee process. (Sen. Gordon, Dist 2; Rep. Keans, Straf 16: **Judiciary**)

99-0858

**SB 27**, relative to assessment fee schedules for trust companies and banks. (Sen. Fraser, Dist 4; Sen. Blaisdell, Dist 10: **Banks**)

99-0846

**SB 28**, relative to food production and distribution and food service licensure. (Sen. Wheeler, Dist 21; Rep. Emerton, Hills 7: **Public Institutions, Health and Human Services**)

99-0746

**SB 29-LOCAL**, relative to the proper sheltering of dogs. (Sen. Cohen, Dist 24; Sen. Roberge, Dist 9; Sen. Wheeler, Dist 21: **Wildlife and Recreation**)

99-0673

**SB 30**, relative to the cruelty to animals law. (Sen. Cohen, Dist 24; Sen. Roberge, Dist 9, Sen. Wheeler, Dist 21: **Wildlife and Recreation**)

99-0672

**SB 31-LOCAL**, allowing property taxpayers to choose whether to participate in the funding of nonprofit organizations through their property taxes. (Sen. Brown, Dist 17: **Ways and Means**)

99-0671

**SB 32**, relative to an employer exemption under the unemployment compensation laws. (Sen. Brown, Dist 17: **Insurance**)

99-0634

**SB 33**, requiring workers' compensation indemnity benefits to be paid on the same date each month. (Sen. Trombly, Dist 7: **Insurance**)

99-0632

**SB 34**, requiring at least 2 crew members on trains. (Sen. Trombly, Dist 7: **Transportation**)

99-0630

**SB 35**, establishing a study committee to investigate motor vehicle inspection requirements. (Sen. Trombly, Dist 7: **Transportation**)

99-0496

**SB 36-FN-A**, relative to salary increases for care providers for persons with developmental and acquired disabilities and making an appropriation therefor. (Sen. Squires, Dist 12; Sen. Blaisdell, Dist 10; Sen. Gordon, Dist 2; Sen. Larsen, Dist 15; Rep. Emerton, Hills 7: **Public Institutions, Health and Human Services**)

99-0381

**SB 37-FN**, relative to fees for testing of domestic animals for disease. (Sen. Wheeler, Dist 21; Sen. Roberge, Dist 9; Rep. Babson, Carr 5: **Wildlife and Recreation**)

99-0357

**SB 38**, relative to the optional term for election of a cooperative school district moderator. (Sen. Squires, Dist 12: **Public Affairs**)

99-0331

**SB 39**, eliminating the voting column for vice-president on the presidential primary ballot. (Sen. McCarley, Dist 6; Sen. J. King, Dist 18: **Public Affairs**)

99-0293

**SB 40**, relative to the health care fund. (Sen. Squires, Dist 12: **Finance**)

99-0979

**SB 41**, correcting a reference in provisions relating to hunting and fishing licenses for members of the armed services. (Sen. Johnson, Dist 3: **Wildlife and Recreation**)

99-0261

**SB 42-LOCAL**, establishing a committee to study safety improvements at the U.S. Route 1 traffic circle in the city of Portsmouth. (Sen. Cohen, Dist 24; Rep. Pantelakos, Rock 30; Rep. M. Fuller Clark, Rock 36; Rep. Norelli, Rock 31: **Transportation**)

99-0965

**SB 43**, creating a commission to research making Hilton Park in the city of Dover property of that city. (Sen. Wheeler, Dist 21; Rep. Gilmore, Straf 11: **Energy and Economic Development**)

**Adopted.**

**In recess.**

## INTRODUCTION OF SENATE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the clerk, Senate Bills numbered 45-49 shall be, by this resolution, read a first and second time by the therein listed titles, laid on the table for printing and referred to the therein designated committees.

**Adopted.**



**First and Second Reading and Referral**

99-0931

**SB 45-FN-A**, allowing a waiver of interest for the time period of an extension of the date of payment of the legacies and successions tax. (Sen. Russman, Dist 19; Sen. Francoeur, Dist 14; Sen. McCarley, Dist 6; Rep. M. Fuller Clark, Rock 36: **Judiciary**)

99-0669

**SB 46-FN**, relative to the applicability of mooring permit requirements. (Sen. Johnson, Dist 3; Sen. Russman, Dist 19; Rep. Bradley, Carr 8; Rep. Dickinson, Carr 2: **Wildlife and Recreation**)

99-0485

**SB 47-FN**, relative to compensation for time lost by fish and game conservation officers for injuries received in the line of duty, and restoring certain leave time for a conservation officer injured while on duty on August 19, 1997. (Sen. F. King, Dist 1; Sen. J. King, Dist 18; Sen. Blaisdell, Dist 10; Sen. Disnard, Dist 8; Sen. Gordon, Dist 2: **Wildlife and Recreation**)

99-0948

**SB 48-FN-LOCAL**, relative to establishing an adequate education and education financing reform commission and relative to state grants for educational adequacy for fiscal years 2000 and 2001, and making appropriations therefor. (Sen. Squires, Dist 12: **Education**)

99-1007

**SB 49-FN-A-LOCAL**, relative to establishing the cost of an adequate education, and relative to creating a commission to study the methodology used in establishing the cost of an adequate education, and making an appropriation therefor. (Sen. McCarley, Dist 6; Sen. D'Allesandro, Dist 20: **Education**)

**RESOLUTION**

Senator Cohen moved that the business of the day being completed that the Senate now adjourn until Thursday, January 28, 1999.

**Adopted.****Adjournment.***January 28, 1999*

The Senate met at 10:30 a.m.

A quorum was present.

The prayer was offered by Father David P. Jones, Senate Chaplain.

There are two ways to respond to a difficult challenge. One is the Chicken Little approach which involves running around in spasms of hand wringing and "ain't it awfuling". Fearful hearts and smaller minds tend to favor that style. The alternate reaction to any daunting challenge is the Pony-in-the-Manure-pile one. A creative mind with the perspective of a balanced life lets you see beyond the distasteful parts of the scene to the essential prize that must lie somewhere nearby. Political posturing depends on the first response; leadership grows out of the second. I know each of you are wrestling with a huge and critical challenge. There is plenty of manure to go around. But I see you in a variety of ways, choosing to function using that second option over the first — and I honor you for leading.

*Lord of little children and their teachers, Lord of home owners and their families, Lord of workers and their businesses, Lord of public servants and their constituents: Help us to look carefully today, that we may see beyond the aromatic distractions that clamor for our attention and catch glimpses together of the right way to go. May our ears be attuned to the soft sounds of our genuine opportunities and not just to the raucous squawking of our anxieties. And finally, give us Your grace that we may tread cautiously today and not step in anything that we would regret.* Amen

Senator Johnson led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS

### HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 111-L**, relative to the validity and enforceability of certain obligations and indebtedness of municipalities and allowing school districts and towns to hold special meetings to address issues raised by resolution of the Claremont lawsuit.

**HB 234-FN-A**, relative to state matching funds for Federal Emergency Management Agency disaster assistance grants, and making appropriations therefor.

**HB 344-L**, relative to voting in official ballot school districts.

### RESOLUTION

Senator Cohen moved that the House Bills in the possession of the Clerk be introduced into the Senate at the present time.

**Adopted.**

### SUSPENSION OF THE RULES

Senator Cohen moved that the Rules of the Senate be so far suspended as to dispense with the referral to committee, a committee hearing, notice of hearing, a committee report, notice of report in the calendar and that **HB 111-L** be on second reading at the present time.

**SENATOR GORDON:** Senator Cohen, I would just like you to explain to me why it is necessary to suspend the rules on this particular bill?

**SENATOR COHEN:** I think that the Senate president just discussed that. There is an urgency on this that has been discussed and an agreement has been reached with the House leadership on this that this particular bill has some degree of urgency on this, where it relates to Claremont, I think that we are all under the gun on this. This is something that has to be done to help reassure the towns' questions that they have had. In addition, the bill will be going to Senate Finance.

**SENATOR GORDON:** If it is such an emergency, why was the House able to hold hearings on the bill and go through its normal process of processing the bill?

**SENATOR COHEN:** My understanding is that the House went fairly quickly on this and that we are acting in a manner to expedite this and to get it done as quickly as possible and I don't see any particular controversy with the particular bills here. At least this particular one, and we don't expect any at this point in time. There seems to be an agreement

on this one and that is why, if it were controversial, it would be a different story. My understanding is that we don't expect any controversy on this and this is something that we can do to help our constituents.

SENATOR HOLLINGWORTH: I would like to try and answer Senator Gordon's question. This is the sister bill to HB 100 and the reason that we were asked to fast-track it is that the communities are feeling somewhat stressful recognizing that they are getting closer to the wire and that they have to make some decisions and that this is just to add...while the liability of the community decision makers, the school boards and the selectmen, I believe, are already covered as far as any liability that they might have, many of the school boards and the selectmen felt that they wanted that extra guarantee, another belt and suspenders type of situation as we had under HB 100. That is what HB 111 would address and also to allow banks some security that they could go ahead and make those loans in view of the fact that there is this concern, that they may not be able to borrow and that the people who investigate the banks, not necessarily would say that they couldn't make those loans because of the way that they would have to collect the money to pay it back. As you noticed, the bill has a December 31, 1999 sunset. It dies as of that day. It is for 15 months only. That is why the House asked us to try and get that out to add that security to the communities that are in that situation. It will go to Finance and when we come back from Finance with it with a motion on that bill, if you should choose at that time not to want that bill to go forward and want further hearings, I think that would be appropriate, but I hope that you would see that there is some concern on the public's part to pass this.

SENATOR RUSSMAN: I have two questions. 1) While it is going to Finance, I take it that is for some type of a hearing at all or is it going to be something that is going to be done today and brought back or what is the intention?

SENATOR BLAISDELL (In the Chair): Senator Russman, the intent is to send it down to Senate Finance and they will take a look at it and then it will come right back up here while we are in session today.

SENATOR RUSSMAN: With having answered that then, if I may, I too share the notion that this is an important bill, but at the same time, the suspension of the rules is an extraordinary thing for the Senate to do at any point and should not be taken lightly. I certainly would urge the Senate on these other bills to question really, whether or not they are of an emergency nature. I think that mere fact that we may share some agreement on them, I think that our constituents deserve a public hearing and certainly the process deserves a public hearing. I think that while this bill, because of the Claremont situation, probably should go forward. I can't stress enough the importance of having that process met in every situation if possible.

SENATOR BLAISDELL (In the Chair): Senator Russman your words are well taken. I thought about this when I made the decision and agreed to it with the Speaker. I realize the process in all of the years that I have been here. Very seldom do we suspend the rules. I think that this is an important enough issue that we should suspend the rules.

SENATOR F. KING: Senator Hollingworth, it seems clear that the first two paragraphs deal with the issue of towns who may need to borrow money prior to April 1 and it is in keeping with HB 100, which we passed earlier. I guess what this does is after April 1, if the legislature hasn't



acted then, this process starts all over again? My concern is about paragraph three. It seems to me that this is giving school boards...it is waiving the issue that school boards now have to make a claim that what they are doing is of sufficient necessity to allow the court to grant it special meeting?

SENATOR HOLLINGWORTH: Yes.

SENATOR F. KING: And it extends the date not past March 31, but it extends this date now to December 31, 1999. I don't have the statute in front of me and this is an amended bill which we just received a couple of minutes ago. In paragraph three it is something that is pretty unusual. That statute was put in a few years ago to make sure that we wouldn't have school meetings in July and August to deal with some specific issue unless it was very important. This seems to take that out. Is that the intent?

SENATOR HOLLINGWORTH: I would like to explain to you why that is there. As you well know, the funding mechanism that we used to address the Claremont suit is going to take and make an impact on some communities. While this was not in the original bill that Senator Johnson and I sponsored, that was an amendment that was brought in at the hearing and, at that time, I said that I was taking no position one way or the other because I felt that I was representing the Senate and this hadn't come in yet without notice to me or to Senator Johnson. But it was clear at the hearing that the intent was that communities are going to have passed their first hearing. After Claremont has decided how it is funded may have an impact on those communities, particularly if there should be a statewide property tax of any kind. Almost every bill that is before the process that has been heard in the House has had a portion of a statewide property tax. Whether you are a sending town, a town that may be sending money if that should become law, or a receiving town, you may need to adjust your town portion of that budget with that in mind. It is not required that you hold a hearing, it is up to the town to decide whether they would or would not and it only has a window till December 1999. I understand the concerns but that is one of the things that the Municipal Association and the School Board Association felt very strongly about. They were the ones that proposed this amendment and they were the ones that requested that that be part of this bill.

SENATOR F. KING: So what you are telling me is that this came in, this was introduced in the public hearing in the House?

SENATOR HOLLINGWORTH: That is right.

SENATOR F. KING: It seems to me that it assumes that something may take place in the ultimate decision on Claremont that could very easily be part of the Claremont bill, that this paragraph could very easily appear in the Claremont bill and it does more than give away the issue of how we fund Claremont. It gives away the protection that communities have had about other types of special meetings other than just Claremont?

SENATOR HOLLINGWORTH: No. I believe that it says anything dealing with Claremont. It doesn't do away with any of the other issues. It only states those issues dealing with Claremont.

SENATOR F. KING: You have had an advantage to attend the hearing and I haven't so you will excuse my questions. Thank you.

SENATOR GORDON: **TAPE CHANGE** no doubt that there is probably some necessity for the legislation and I am not questioning the legisla-



tion on its merits. I am just concerned about the process. The process, as I can see it, is that there was no notice in the calendar that we would be addressing this bill today. I didn't receive the original version of the bill until a half an hour before we were supposed to meet today. Now I have an amended version of the bill to deal with here today. Yes, it is an important issue and if it is an important issue it seems like it should have a public hearing. With all due respect to the president, I am not comforted by the fact that the process has been decided by a meeting with Donna Sytek of the House. I think that the Senate ought to decide its process and ought to adhere to the process as much as we possibly can. So it has nothing to do with the merits of the bill. The one thing that I would comment on is apparently, as a result of a hearing in the House, they decided to amend their bill to improve it and apparently we are going to relinquish that prerogative in the Senate and not hold a hearing so that we might have that same opportunity. So it has nothing to do with the merits of the bill, it is simply a matter of process, Mr. President.

SENATOR SQUIRES: I rise to the section III of the amended bill, in support. This was discussed to some detail at the moderator's workshop last week. The problem is this: Where I am there are a large number of bond proposals coming to the school meetings in particular. What is likely to happen is that they will all be rejected because the funding is not clear. What this does is to allow, once the funding becomes clear, that the community can reassemble sometime in the fall or sometime in a later date and then vote again on the bond issue taking out the uncertainty of the funding. That is an issue in Amherst, it is a huge issue in Nashua, and it is an issue in Brookline. So for those reasons, I rise in support of the bill and in particular of this section III.

SENATOR FRASER: Mr. President, maybe you can help me out. I am not quite clear...by the way, I am going to support the motion, but I am not quite clear as of yet as to what is going to happen in Finance. You are going to send the bill down to Finance if this body embraces it. It will be referred to the Finance Committee. I guess that I would like to know what they are going to do with it?

SENATOR BLAISDELL (In the Chair): Senator Fraser, it was a request by Senator Hollingworth that she would like to sit down and talk with the Senate Finance Committee and then bring it back up to the floor. When I agreed to...getting back to Senator Gordon's question on making an agreement with Speaker Sytek, the reason that I did that was so that we would be able to bring this to the Senate floor and let you people decide. If you people decide that you want a public hearing — there is still 24 of us that make a decision in this room. I think that it is important enough to put this on the fast track and get it out of here so that some of the things that are going on in the state and the way that the school boards and the selectmen in the towns and other places are talking to all of us and want to know what we are doing? I have had many lawyers call me on this and I have left this up to Senator Hollingworth and heard her talk with Neal Kurk. So it is before you. If you people decide that you don't want to do it, certainly I just brought it before you and you make the decision.

SENATOR FRASER: One further clarification, Mr. President?

SENATOR BLAISDELL (In the Chair): Yes, please go ahead.

SENATOR FRASER: So this is strictly on the process. The bill is going to be referred to Senate Finance just for a discussion?

SENATOR BLAISDELL (In the Chair): Just for a discussion and then it is going to come back up. I intend to have them bring it back up. Is that your intention, Senator Hollingworth?

SENATOR HOLLINGWORTH: Yes it is.

SENATOR FRASER: It sounds like a waste of time to me, Mr. President, to send it to Senate Finance.

SENATOR HOLLINGWORTH: Well, the reason that I wanted Senate Finance to get it is so that they could vote on whether they wanted it to go out. I felt that it is an important process and that that step, at least to the committee, come out and vote on it ought to pass and then come back to this body with our recommendation and then you could decide whether to support it or not. I requested that from the president rather than to have it just brought to the floor. I felt that the debate and the merits would be clear to the committee and that any questions that they had we could send for experts if you wanted them to answer that. I regret that it appears that some of you didn't get a memo. I sent it to Senator Carl Johnson and I sent it to Senator Fred King describing what the amendment and the change was. I regret that not all of you got it. I sent a copy of the amendment that took place and I thought that I had covered my bases. I will in the future, make sure that each and every one of you gets a copy.

SENATOR BLAISDELL (In the Chair): Members of the Senate, your republican leader, Senator Carl Johnson, will tell you that I have been in contact with him constantly about this particular piece of legislation to be sure that the republican leadership and the republican party knew what we were doing. Just this morning, Senator Johnson mentioned to me about the public hearing that Senator Gordon was concerned about and I recognized that. So it isn't that we haven't tried to keep the line of communication open. I think that Senator Johnson will back me up on that. I have been in touch with him every day to be sure. I have done that, not only on this, but also on anything. I have brought Senator Johnson in on assigning bills and done everything else, so it isn't like we haven't tried to keep a line of communication open between the two parties.

SENATOR F. KING: I just want to make it clear that, I, too, am going to support this legislation. I thought that asking questions does not mean that you are for or against the legislation, we need to understand. I think that we have a right to ask and be clear on what the issues are before we vote and that was what I was attempting to do. I, too, agree that this is an important issue.

SENATOR BLAISDELL (In the Chair): Senator King, I understand exactly. I don't mind. I don't take anything as a criticism of me because I suspended the rules on this.

**Recess.**

**Out of Recess.**

**Adopted by the necessary 2/3 vote.**

**HB 111-L**, relative to the validity and enforceability of certain obligations and indebtedness of municipalities and allowing school districts and towns to hold special meetings to address issues raised by resolution of the Claremont lawsuit. Ought to pass. Senator Cohen for the committee.

**Adopted.**

**Ordered to third reading.**

### SUSPENSION OF THE RULES

Senator Cohen moved that the Rules of the Senate be so far suspended as to dispense with the referral to committee, a committee hearing, notice of hearing, a committee report, notice of report in the calendar and that **HB 234-FN-A**, be on second reading at the present time.

**SENATOR GORDON:** I don't want to sound like an obstruction here, but I would just like to ask in essence what I asked about the previous bill, and that is why does this need to be fast-tracked without notice of a hearing and, if I could ask Senator Cohen? Again, it doesn't have to do with merits of the legislation because I don't have any objection necessarily with the merits of the legislation, but again, the House was able to take its time and was able to have a hearing and I would just like to know why the Senate isn't going to have a hearing on the bill?

**SENATOR HOLLINGWORTH:** I don't think that you want me to go through this lengthy document that I have. There are three different storms that we are talking about. We are talking about October and November of 1995, the wind and rainstorm. The majority of that money would go to Lincoln for the sewerage lagoons that they spent the money way back in 1995 and they have just been ruled eligible to collect those funds. That is the \$53,129. The second piece is genuine 1998 storm, the wind, ice and snowstorm. That one is \$270,752. That happens to be to all of the towns, near Alton... I would like to have a copy sent to each Senator if you would like. It is several pages long. It is by county. If you would like to see that one. The third section of the bill is June and July of 1998, the flood storms. Again, it is by county and there are several pages of that. If you would like, we can make those available to the Senators. The towns have been calling for the money and the reason that they asked it to be given to them speedily is naturally they would like to have this money. Some of them have been waiting a period of time for. We felt that it was appropriate that we send this money as quickly as we could. It is owed to the towns and they have taken their money and spent their share and this money comes part out of the general fund and part out of the highway funds.

**SENATOR D'ALLESANDRO:** I just want to make a point that many of the communities have expended this money and it has been a period of time. Almost a four-year-period. I think that it is incumbent upon us as legislators to think of those communities and if there is a methodology to reimburse them as quickly as we can, we should take advantage of that. It is appropriate. They have been waiting for the money and I support the action.

**SENATOR D'ALLESANDRO:** Senator Hollingworth, is my statement correct that some of these communities have expended money on these projects and that this is a reimbursement?

**SENATOR HOLLINGWORTH:** Yes, in fact all of the communities have.

**SENATOR D'ALLESANDRO:** So all of the communities have put forth money and this is reimbursement. Thank you, Mr. President.

**SENATOR GORDON:** Again, I don't want to dwell on it, but we have just gone through three weeks and we haven't heard a single hearing in the Senate, Mr. President. If we knew that this bill was coming, which I presume we did, it has been the practice in the past, as I recall, that there would be joint Senate and House hearings on bills. That perhaps that could have been arranged. I don't disagree with the merits of the



bill, it is like the last bill. I represent the town of Lincoln and I want to see the town of Lincoln get their money, but there also is an issue of process here. To be presented with a bill...it is nice for someone to say, let me show you the figures and how your towns will be affected. Well I would like to have known that or had gotten those figures perhaps at a hearing a week ago and understand that then rather to be told that I can have the figures after we have already moved to suspend the rules and put it on the floor of the Senate. Again, I don't think that I can object to the bill, I think that I am going to have to go forward with the bill, and I want to go forward with the bill and represent my towns. I am just concerned about the process, Mr. President.

SENATOR F. KING: Just so I understand, it is my recollection that we had a very similar issue before our body last year and I further recollect that we were told that there was no need to **TAPE INAUDIBLE** budget process and I further recall that that sum of money was...we chased it to the closing hours of the budget and it was put in and passed in those bills and so on. So, I just want to know this is different than what we have done in the past? Is that not true?

SENATOR BLAISDELL (In the Chair): Absolutely true, Senator King. It is different.

**Adopted by the necessary 2/3 vote.**

**HB 234-FN-A**, relative to state matching funds for Federal Emergency Management Agency disaster assistance grants, and making appropriations therefor. Ought to pass. Senator Hollingworth for the committee.

**Adopted.**

**Ordered to third reading.**

### **SUSPENSION OF THE RULES**

Senator Below moved that the Rules of the Senate be so far suspended as to dispense with the referral to committee, a committee hearing, notice of hearing, a committee report, notice of report in the calendar and that **HB 344-L**, be on second reading at the present time.

SENATOR BELOW: This bill was only introduced in the House this morning. It did not have a public hearing in the House. It is to address a technical problem with the official ballot law that has arisen in the Mascoma Valley Regional School District. Back in the 70's the Mascoma Valley District adopted a procedure for multiple towns to disperse polling places to the election of school district officers and school board members. When they adopted the official ballot they thought that they could continue with that process. When they went to post their warrant this year, the question arose and they got an opinion, I believe, from the attorney general to the effect that they had not properly adopted a multi-town additional polling place provision under the official ballot law even though they already had that provision for the election of officers and school board members. And they have a conflicting legal opinion that says that because of the prior adoption of the process that they could go forward with it, so they have a situation where they have issued a warrant for additional polling places, but have conflicting opinions on whether they can use that or if they have to have a disperse polling voting for the school officers and central polling for the adoption of the budget. So this bill is really to correct a technical problem and allow not just that district but any district that has confusion on this issue, if the duly elected local school



board chooses to proceed with dispersed voting to be able to do that so that everyone can get on the same page for the future and get the proper adoption of the provisions to our multiple polling places.

SENATOR F. KING: Senator Below, when would the actual voting take place?

SENATOR BELOW: Senator, whenever it is under the official ballot law. I am afraid that I don't have the specific answer to that. It is coming up with process, I believe. I think March or April, I think that the time for the warrants is already passed. Time is of the essence with this.

SENATOR F. KING: So it has to do with the posting of the warrant?

SENATOR BELOW: Yes.

SENATOR F. KING: Thank you.

**Adopted by the necessary 2/3 vote.**

**HB 344-L**, relative to voting in official ballot school districts. Ought to Pass. Senator Below for the committee.

**Adopted.**

**Ordered to third reading.**

## **ANNOUNCEMENTS**

### **RESOLUTION**

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, all bills ordered to third reading be by this resolution be read a third time and passed.

**Adopted.**

## **LATE SESSION**

### **RESOLUTION**

Senator Cohen moved that the business of the day being completed, that the Senate be in recess for the sole purpose of introducing legislation, printing of bills, referring bills to committee, scheduling committee hearings and Enrolled Bills Reports and amendments and that when we adjourn we adjourn to the Call of the Chair.

**Adopted.**

## **Third Reading and Final Passage**

**HB 111-L**, relative to the validity and enforceability of certain obligations and indebtedness of municipalities and allowing school districts and towns to hold special meetings to address issues raised by resolution of the Claremont lawsuit.

**HB 234-FN-A**, relative to state matching funds for Federal Emergency Management Agency disaster assistance grants, and making appropriations therefor.

**HB 344-L**, relative to voting in official ballot school districts.

Senator Johnson moved that the Senate now recess for the sole purpose of introducing legislation, referring bills to committee, printing of bills, scheduling committee hearings and Enrolled Bills Reports and amendments.

**Adopted.**

**Recess.**

**Out of Recess.****REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bills:

**HB 111**, relative to the validity and enforceability of certain obligations and indebtedness of municipalities and allowing school districts and towns to hold special meetings to address issues raised by resolution of the Claremont lawsuit.

**HB 234**, relative to state matching funds for Federal Emergency Management Agency disaster assistance grants, and making appropriations therefor.

**HB 344**, relative to voting in official ballot school districts.  
Senator Disnard moved adoption.

**Adopted.**

**Recess.**

**Out of Recess.**

**INTRODUCTION OF SENATE BILLS**

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the clerk, Senate Bills numbered 50-CACR 20 shall be by this resolution read a first and second time by the therein listed titles, laid on the table for printing and referred to the therein designated committees.

**Adopted.**

**First and Second Reading and Referral**

99-0922

**SB 44-FN**, relative to physician aid-in-dying for certain persons suffering from a terminal condition. (Sen. Wheeler, Dist 21; Rep. Guest, Graf 10 - **Judiciary**)

99-0872

**SB 50 FN-LOCAL**, relative to the state's responsibility to provide an adequate education. (Sen. Gordon, Dist 2; Rep. R. McKinley, Straf 2: **Education**)

99-0294

**SB 51-FN-A-LOCAL**, establishing a referendum for a new taxation plan to fund public education. (Sen. Below, Dist 5; Sen. Larsen, Dist 15; Sen. Trombly, Dist 7; Sen. Cohen, Dist 24; Rep. Burling, Sull 1: **Public Affairs**)

99-0252

**SB 52**, requiring insurance coverage for infertility treatments. (Sen. Cohen, Dist 24; Rep. M. Fuller Clark, Rock 36: **Insurance**)

99-0380

**SB 53-FN**, relative to licensure of physicians providing teleradiology services in this state. (Sen. Wheeler, Dist 21; Sen. Squires, Dist 12; Sen. Roberge, Dist 9; Rep. Emerton, Hills 7; Rep. S. Holley, Hills 28; Rep. Nordgren, Graf 10; Rep. M. Fuller Clark, Rock 36: **Public Institutions, Health and Human Services**)

99-0452

**SB 54-FN**, relative to partial-birth abortion. (Sen. Francoeur, Dist 14; Sen. Brown, Dist 17; Sen. Krueger, Dist 16; Sen. Johnson, Dist 3; Sen. Roberge, Dist 9: **Public Institutions, Health and Human Services**)

99-0454

**SB 55**, relative to health insurance for persons who use tobacco products. (Sen. Francoeur, Dist 14; Sen. Roberge, Dist 9; Sen. Brown, Dist 17: **Insurance**)

99-0468

**SB 56**, amending the law relative to who may adopt. (Sen. Squires, Dist 12: **Judiciary**)

99-0729

**SB 57**, permitting challenges to judges. (Sen. Roberge, Dist 9; Rep. Pepino, Hills 40; Rep. Mirski, Graf 12; Rep. Richardson, Ches 12; Rep. Hunter, Hills 7; Rep. L. Jean, Hills 17: **Judiciary**)

99-0834

**SB 58**, allowing clinical mental health counselors to obtain third party payment for services rendered which would otherwise qualify for such payments. (Sen. D'Allesandro, Dist 20: **Insurance**)

99-0841

**SB 59-LOCAL**, relative to bonding of animal owners convicted of animal cruelty. (Sen. Wheeler, Dist 21; Sen. Roberge, Dist 9: **Wildlife and Recreation**)

99-0845

**SB 60**, establishing a committee to study the licensure of radiographers and radiologic technicians. (Sen. Wheeler, Dist 21; Rep. Nordgren, Graf 10: **Public Institutions, Health and Human Services**)

99-0848

**SB 61**, relative to the definition of ski craft. (Sen. Johnson, Dist 3: **Wildlife and Recreation**)

99-0850

**SB 62-FN-A-LOCAL**, relative to the acquisition of Umbagog Lake Campground in Cambridge, New Hampshire, and making an appropriation therefor. (Sen. F. King, Dist 1; Sen. Johnson, Dist 3; Sen. Gordon, Dist 2: **Wildlife and Recreation**)

99-0854

**SB 63**, relative to applicability of workers' compensation to persons employed by 2 or more employers. (Sen. Cohen, Dist 24: **Insurance**)

99-0877

**SB 64**, relative to powers of appointment. (Sen. Gordon, Dist 2; Rep. Chandler, Carr 1; Rep. Mock, Carr 3: **Judiciary**)

99-0878

**SB 65**, establishing a study committee to review field activities conducted by the department of health and human services relative to children, youth and families. (Sen. Gordon, Dist 2; Sen. Francoeur, Dist 14; Rep. Pilliod, Belk 3: **Public Institutions, Health and Human Services**)

99-0898

**SB 66**, relative to structured settlements. (Sen. McCarley, Dist 6: **Judiciary**)

99-0901

**SB 67**, limiting liability resulting from the use of automatic external defibrillation. (Sen. Gordon, Dist 2; Rep. Pilliod, Belk 3: **Judiciary**)

99-0916

**SB 68**, establishing minimum 400 foot buffer zones around sensitive areas from application of herbicides. (Sen. Russman, Dist 19; Sen. D'Allesandro, Dist 20; Sen. Wheeler, Dist 21; Sen. Cohen, Dist 24; Rep. Bradley, Carr 2; Rep. Spang, Straf 8: **Environment**)

99-0924

**SB 69-LOCAL**, relative to health care charitable trusts and community benefits. (Sen. Wheeler, Dist 21; Sen. Squires, Dist 12; Rep. Emerton, Hills 7; Rep. Copenhagen, Graf 10; Rep. M. Fuller Clark, Rock 36: **Executive Departments and Administration**)

99-0926

**SB 70**, changing the safe drinking water standard for MTBE. (Sen. Wheeler, Dist 21; Sen. Cohen, Dist 24; Sen. Russman, Dist 19; Sen. D'Allesandro, Dist 20; Sen. Below, Dist 5; Rep. B. Hall, Hills 20; Rep. Owen, Merr 6: **Environment**)

99-0927

**SB 71**, establishing a ban on MTBE in gasoline as of January 1, 2000. (Sen. Wheeler, Dist 21; Sen. D'Allesandro, Dist 20; Sen. Below, Dist 5; Sen. Russman, Dist 19; Rep. B. Hall, Hills 20; Rep. Owen, Merr 6: **Environment**)

99-0930

**SB 72**, exempting certain portions of Seabrook Beach Village District and certain portions of Hampton Beach from certain provisions of the excavating, filling, and construction permit laws. (Sen. Hollingworth, Dist 23; Sen. J. King, Dist 18: **Environment**)

99-0953

**SB 73**, relative to eligibility for off-premise liquor licenses. (Sen. McCarley, Dist 6; Sen. Cohen, Dist 24; Rep. Pantelakos, Rock 30: **Ways and Means**)

99-0957

**SB 74**, relative to the rulemaking authority of the real estate commission concerning practices relating to certain dwellings. (Sen. Fraser, Dist 4: **Executive Departments and Administration**)

99-0975

**SB 75**, relative to out-of-state boats. (Sen. Johnson, Dist 3: **Transportation**)

99-0982

**SB 76-LOCAL**, allowing certain municipalities to offer tax exemptions to foster commercial and industrial construction. (Sen. F. King, Dist 1; Sen. Russman, Dist 19; Sen. Hollingworth, Dist 23; Sen. Blaisdell, Dist 10; Sen. Disnard, Dist 8; Sen. J. King, Dist 18; Sen. Johnson, Dist 3; Sen. Gordon, Dist 2; Rep. P. Davis, Coos 1; Rep. L. Pratt, Coos 4; Rep. Mears, Coos 7: **Ways and Means**)

99-1001

**SB 77**, relative to authorized regional enrollment area schools. (Sen. Fraser, Dist 4; Rep. Millham, Belk 4: **Education**)

99-1004

**SB 78**, clarifying charitable trust solicitation campaign records. (Sen. Hollingworth, Dist 23: **Executive Departments and Administration**)

99-0923

**SB 79**, requiring vendors who operate electronic customer service terminals to disclose to customers if they place floor holds on or charge other fees to the bank accounts of customers using ATM cards at such terminals. (Sen. J. King, Dist 18; Sen. Hollingworth, Dist 23; Sen. D'Allesandro, Dist 20; Sen. Trombly, Dist 7; Sen. Disnard, Dist 8; Rep. Dwyer, Hills 43: **Banks**)



99-0107

**SB 80**, adding the name of Martin Luther King, Jr. to Civil Rights Day. (Sen. Hollingworth, Dist 23; Sen. D'Allesandro, Dist 20; Sen. Fernald, Dist 11; Sen. Russman, Dist 19; Sen. J. King, Dist 18; Sen. Wheeler, Dist 21; Sen. McCarley, Dist 6; Sen. Pignatelli, Dist 13; Sen. Cohen, Dist 24; Sen. Trombly, Dist 7; Sen. Below, Dist 5; Sen. Blaisdell, Dist 10; Sen. Larsen, Dist 15; Sen. Krueger, Dist 16; Sen. Fraser, Dist 4; Rep. Kelley, Rock 22; Rep. O'Keefe, Rock 21; Rep. Peterson, Hills 8; Rep. Bradley, Carr 8; Rep. Weatherspoon, Rock 20: **Public Affairs**)

99-0994

**SB 81**, permitting the city of Manchester to issue bonds to finance unfunded liability of the city's employee pension system. (Sen. Krueger, Dist 16: **Banks**)

99-0320

**SB 82**, relative to the termination of employees. (Sen. J. King, Dist 18; Sen. Disnard, Dist 8; Rep. Dwyer, Hills 43; Rep. Gleason, Rock 13: **Executive Departments and Administration**)

99-0379

**SB 83**, relative to the regulation of the practice of veterinary medicine. (Sen. Wheeler, Dist 21; Sen. Roberge, Dist 9; Rep. Babson, Carr 5: **Executive Departments and Administration**)

99-0453

**SB 84**, relative to eligibility for welfare benefits. (Sen. Francoeur, Dist 14; Sen. Brown, Dist 17; Sen. Krueger, Dist 16: **Public Institutions, Health and Human Services**)

99-0480

**SB 85-FN**, including the judiciary as a public employer under the public employee labor relations act. (Sen. F. King, Dist 1; Sen. J. King, Dist 18; Sen. Larsen, Dist 15; Rep. Quandt, Rock 20; Rep. Perkins, Hills 5: **Insurance**)

99-0508

**SB 86**, relative to enforcement of the collection and payment of county taxes by the county treasurer. (Sen. F. King, Dist 1: **Ways and Means**)

99-0915

**SB 87**, relative to the authority of the auxiliary marine patrol. (Sen. Johnson, Dist 3: **Transportation**)

99-0517

**SB 88-FN**, relative to penalties for third driving while intoxicated offenses. (Sen. Francoeur, Dist 14; Sen. Brown, Dist 17; Sen. Krueger, Dist 16: **Judiciary**)

99-0612

**SB 89-LOCAL**, relative to library trustees. (Sen. Hollingworth, Dist 23; J. King, Dist 18: **Executive Departments and Administration**)

99-0633

**SB 90**, establishing a committee to study and investigate the needs for small business loans to pay for technical improvements for persons working at home. (Sen. Trombly, Dist 7: **Energy and Economic Development**)

99-0838

**SB 91**, designating segments of the Cold River as protected under the rivers management and protection program. (Sen. Disnard, Dist 8; Sen.

Russman, Dist 19; Rep. Tuthill, Sull 5; Rep. J. Pratt, Ches 2; Rep. Young, Sull 6; Rep. McGuirk, Ches 1; Rep. J. Phinizy, Sull 7: **Environment**)

99-0840

**SB 92-FN**, relative to education grants funded by the companion animal neutering fund. (Sen. Wheeler, Dist 21; Sen. Roberge, Dist 9; Rep. J. Phinizy, Sull 7; Rep. Wendelboe, Belk 2: **Wildlife and Recreation**)

99-0847

**SB 93**, relative to self-storage facility liens. (Sen. Blaisdell, Dist 10; Sen. Gordon, Dist 2; Rep. Herman, Hills 13: **Judiciary**)

99-0851

**SB 94**, relative to absentee voter affidavits. (Sen. Trombly, Dist 7; Rep. Buckley, Hills 44: **Public Affairs**)

99-0853

**SB 95**, relative to uninsured motor vehicle coverage. (Sen. Cohen, Dist 24: **Insurance**)

99-0855

**SB 96**, relative to pre-approval of payment of medical services by workers' compensation insurers. (Sen. Cohen, Dist 24: **Insurance**)

99-0856

**SB 97**, relative to testamentary trusts which are institutional funds. (Sen. Cohen, Dist 24: **Banks**)

99-0857

**SB 98**, relative to a counselor's duty to report child abuse. (Sen. Cohen, Dist 24: **Judiciary**)

99-0862

**SB 99**, allowing the same interest rates and charges on small loans under \$1,500 as is allowed on small loans over \$1,500. (Sen. D'Allesandro, Dist 20: **Banks**)

99-0863

**SB 100 -FN-A-LOCAL**, establishing a pilot program to provide homeless people with free meals in exchange for volunteer work and continually appropriating certain funds for this purpose. (Sen. D'Allesandro, Dist 20; Rep. M. Fuller Clark, Rock 36 **Public Institutions, Health and Human Services**)

99-0864

**SB 101**, relative to landlord-tenant obligations. (Sen. Disnard, Dist 8: **Public Affairs**)

99-0865

**SB 102**, relative to premium tax penalties. (Sen. Fraser, Dist 4; Sen. Blaisdell, Dist 10: **Insurance**)

99-0867

**SB 103**, making certain changes in the insurance laws. (Sen. Fraser, Dist 4; Sen. Blaisdell, Dist 10: **Insurance**)

99-0868

**SB 104**, making a variety of changes in certain insurance laws. (Sen. Fraser, Dist 4; Sen. Blaisdell, Dist 10: **Insurance**)

99-0869

**SB 105**, relative to continuation of coverage of health insurance. (Sen. Fraser, Dist 4; Sen. Blaisdell, Dist 10: **Insurance**)

99-0870

**SB 106**, relative to continuing education for insurance adjusters. (Sen. Fraser, Dist 4; Sen. Blaisdell, Dist 10: **Insurance**)

99-0873

**SB 107**, relative to fees for examination of domestic societies. (Sen. J. King, Dist 18; Rep. Guay, Coos 6; Rep. Dwyer, Hills 43: **Insurance**)

99-0874

**SB 108**, relative to the dispensing of medications by optometrists. (Sen. Gordon, Dist 2; Sen. McCarley, Dist 6; Sen. Disnard, Dist 8; Sen. Krueger, Dist 16; Rep. Haettenschwiller, Hills 29; Rep. Sargent, Hills 3: **Executive Departments and Administration**)

99-0889

**SB 109**, deleting the witnessing requirement for notices of lease. (Sen. Gordon, Dist 2: **Judiciary**)

99-0890

**SB 110**, allowing for discharges of mortgages by affidavit of a New Hampshire attorney. (Sen. Gordon, Dist 2: **Judiciary**)

99-0892

**SB 111**, relative to requirements for acknowledgments and jurats by justices of the peace. (Sen. Gordon, Dist 2: **Judiciary**)

99-0893

**SB 112**, relative to the guardianship of minors. (Sen. Gordon, Dist 2; Rep. Richardson, Ches 12; Rep. E. Gagnon, Hills 48: **Judiciary**)

99-0896

**SB 113**, establishing a division of travel and tourism development within the department of resources and economic development. (Sen. Hollingworth, Dist 23; Sen. Blaisdell, Dist 10; Sen. Wheeler, Dist 21; Sen. Cohen, Dist 24; Sen. J. King, Dist 18; Sen. Johnson, Dist 3; Sen. Trombly, Dist 7; Sen. Disnard, Dist 8: **Executive Departments and Administration**)

99-0899

**SB 114**, relative to health carrier disclosure of third party liability. (Sen. McCarley, Dist 6; Sen. Squires, Dist 12; Rep. Emerton, Hills 7; Rep. M. Fuller Clark, Rock 36: **Insurance**)

99-0900

**SB 115**, relative to participation by certain judges in the state employee group health and dental insurance programs. (Sen. Gordon, Dist 2: **Insurance**)

99-0902

**SB 116**, eliminating straight ticket voting. (Sen. J. King, Dist 18; Sen. Hollingworth, Dist 23; Sen. Trombly, Dist 7; Rep. Dwyer, Hills 43: **Public Affairs**)

99-0918

**SB 117**, relative to the duties of the board of trustees of the community-technical college system. (Sen. Johnson, Dist 3: **Education**)

99-0933

**SB 118**, relative to requirements for retail installment contracts for motor vehicle sales. (Sen. Fraser, Dist 4: **Transportation**)

99-0938

**SB 119**, relative to the withdrawal of a pupil from school. (Sen. J. King, Dist 18; Sen. Disnard, Dist 8; Rep. Dwyer, Hills 43: **Education**)

99-0939

**SB 120**, relative to the health services planning and review board. (Sen. Squires, Dist 12; Rep. Emerton, Hills 7: **Public Institutions, Health and Human Services**)

99-0945

**SB 121**, requiring reports to the department of justice following certain DWI arrests and refusals to take alcohol concentration tests. (Sen. Johnson, Dist 3: **Judiciary**)

99-0959

**SB 122**, allowing certain prisoners to earn good conduct credits reducing such person's minimum sentence. (Sen. J. King, Dist 18; Sen. Blaisdell, Dist 10; Sen. F. King, Dist 1; Sen. Hollingworth, Dist 23; Sen. Trombly, Dist 7; Rep. Dwyer, Hills 43: **Judiciary**)

99-0964

**SB 123**, allowing nontestamentary transfer on death of mutual fund shares under the uniform transfer on death (TOD) security registration act. (Sen. Wheeler, Dist 21; Rep. M. Fuller Clark, Rock 36: **Banks**)

99-0969

**SB 124**, establishing a committee to study the integration of technology at the state and municipal level. (Sen. Below, Dist 5; Rep. N. Kaen, Straf 7: **Internal Affairs**)

99-0971

**SB 125**, prohibiting prison inmates and persons on probation or parole from changing their names. (Sen. Larsen, Dist 15; Sen. Pignatelli, Dist 13; Sen. J. King, Dist 18; Sen. D'Allesandro, Dist 20; Sen. Fraser, Dist 4; Sen. F. King, Dist 1; Rep. Lozeau, Hills 30; Rep. R. McKinley, Straf 2; Rep. Letourneau, Rock 13: **Judiciary**)

99-0972

**SB 126**, requiring approval of the superior court or, in the case of workers' compensation, the labor commissioner, as a precondition to transfer of any structured settlement payment rights. (Sen. Blaisdell, Dist 10: **Judiciary**)

99-0284

**SB 127-FN-A-LOCAL**, establishing a local property tax education homestead allowance against school taxes on residential real estate, establishing a fund to reimburse municipalities for such exemptions, and making an appropriation therefor. (Sen. Brown, Dist 17; Sen. Krueger, Dist 16; Sen. Klemm, Dist 22; Sen. Roberge, Dist 9; Rep. Boyce, Belk 5; Rep. Howard, Carr 10; Rep. Wendelboe, Belk 2; Rep. Letourneau, Rock 13; Rep. Weyler, Rock 18: **Ways and Means**)

99-0725

**SB 128**, replacing the housing assistance fund trust fund with a homeless prevention fund. (Sen. D'Allesandro, Dist 20; Sen. Squires, Dist 12; Rep. Garrish, Hills 37; Rep. Millham, Belk 4; Rep. Konys, Hills 33; Rep. French, Merr 3: **Public Institutions, Health and Human Services**)

99-0883

**SB 129-LOCAL**, requiring towns to disclose any reimbursements received to offset special education expenditures. (Sen. Gordon, Dist 2; Sen. Johnson, Dist 3; Sen. Squires, Dist 12; Sen. F. King, Dist 1; Rep. Alger, Graf 9; Rep. Belvin, Hills 14; Rep. O'Hearn, Hills 26; Rep. Pilliod, Belk 3: **Education**)



99-0876

**SB 130**, establishing a committee to study issues regarding procedures and standards for selection and supervision of court-appointed guardians ad litem. (Sen. Gordon, Dist 2; Sen. Russman, Dist 19; Rep. Pilliod, Belk 3; Rep. J. Brown, Straf 17: **Judiciary**)

99-0637

**SB 131-FN-A**, appropriating funds to the office of travel and tourism. (Sen. Trombly, Dist 7; Sen. Cohen, Dist 24: **Finance**)

99-0631

**SB 132**, requiring the removal of the telecommunications tower on Mount Kearsarge. (Sen. Trombly, Dist 7; Sen. Below, Dist 5: **Environment**)

99-0510

**SB 133-FN**, establishing a process for reviewing judges. (Sen. Brown, Dist 17; Sen. Roberge, Dist 9: **Judiciary**)

99-0387

**SB 134-FN**, relative to medicaid reimbursement rates and dental care. (Sen. Wheeler, Dist 21; Sen. McCarley, Dist 6; Sen. Hollingworth, Dist 23; Rep. M. Fuller Clark, Rock 36; Rep. Copenhaver, Graf 10; Rep. Francoeur, Rock 22; Rep. Pilliod, Belk 3: **Public Institutions, Health and Human Services**)

99-0290

**SB 135-FN**, relative to water supply land protection grants. (Sen. Russman, Dist 19; Sen. Cohen, Dist 24; Sen. Pignatelli, Dist 13; Sen. Fraser, Dist 4; Sen. Johnson, Dist 3; Sen. Gordon, Dist 2; Rep. Bradley, Carr 8; Rep. Royce, Ches 9; Rep. Blanchard, Rock 34; Rep. Vaughn, Rock 35; Rep. Nordgren, Graf 10: **Environment**)

99-0262

**SB 136-FN**, allowing certain state employees to take paid leave to participate in disaster relief service work. (Sen. Fraser, Dist 4: **Executive Departments and Administration**)

99-0227

**SB 137-FN**, relative to use of social security numbers in child support enforcement and in the issuance of driver's licenses. (Sen. Squires, Dist 12: **Public Institutions, Health and Human Services**)

99-0894

**SB 138**, relative to joint tenancy with rights of survivorship. (Sen. Gordon, Dist 2: **Judiciary**)

99-0880

**SB 139**, relative to self-proved wills and making reference changes. (Sen. Gordon, Dist 2: **Judiciary**)

99-0859

**SB 140**, relative to ear piercing. (Sen. Squires, Dist 12: **Public Institutions, Health and Human Services**)

99-0263

**SB 141**, relative to information not subject to the right-to-know law. (Sen. Fraser, Dist 4; Sen. J. King, Dist 18; Rep. Thomas, Belk 3; Rep. Pitts, Rock 35: **Judiciary**)

99-0541

**SB 142**, establishing a process for appeal of decisions of the executive director of fish and game. (Sen. Disnard, Dist 8; Sen. Trombly, Dist 7; Sen. Cohen, Dist 24; Rep. Abbott, Rock 19: **Wildlife and Recreation**)

99-0830

**SB 143 -FN**, relative to penalties for incest. (Sen. Brown, Dist 17: **Judiciary**)

99-0910

**SB 144**, relative to qualifications for members of the fish and game commission. (Sen. Wheeler, Dist 21; Sen. Cohen, Dist 24; Sen. Roberge, Dist 9: **Wildlife and Recreation**)

99-0920

**SB 145 -FN-A**, relative to state financial aid for state fairs, and making an appropriation therefor. (Sen. Blaisdell, Dist 10; Sen. McCarley, Dist 6; Sen. F. King, Dist 1; Sen. Gordon, Dist 2; Sen. Johnson, Dist 3; Sen. Larsen, Dist 15; Rep. Howard, Carr 10: **Wildlife and Recreation**)

99-0932

**SB 146**, granting district courts exclusive jurisdiction over actions involving real estate purchase deposits held in escrow accounts. (Sen. Cohen, Dist 24; Sen. Brown, Dist 17; Sen. Trombly, Dist 7; Rep. Peterson, Hills 8: **Judiciary**)

99-0373

**SB 147**, relative to self-referrals for chiropractic care under managed care organizations. (Sen. Wheeler, Dist 21; Sen. Larsen, Dist 15; Rep. Robb-Theroux, Sull 9; Rep. Bradley, Carr 8: **Insurance**)

99-0469

**SB 148**, relative to the content of personnel files of police officers. (Sen. Roberge, Dist 9: **Judiciary**)

99-0518

**SB 149 -FN**, regulating the practice of hypnotherapy. (Sen. Roberge, Dist 9; Sen. Wheeler, Dist 21; Rep. Brundige, Hills 18; Rep. Milligan, Hills 18; Rep. Seldin, Merr 17; Rep. L'Heureux, Hills 18: **Public Institutions, Health and Human Services**)

99-0726

**SB 150**, making certain reference changes to the department of youth development services. (Sen. J. King, Dist 18; Sen. F. King, Dist 1; Rep. Dwyer, Hills 43; Rep. Emerton, Hills 7: **Public Institutions, Health and Human Services**)

99-0730

**SB 151**, relative to assignment of judges. (Sen. Roberge, Dist 9; Sen. Johnson, Dist 3; Rep. Pepino, Hills 40; Rep. Mirski, Graf 12; Rep. Richardson, Ches 12; Rep. Hunter, Hills 7; Rep. L. Jean, Hills 17: **Judiciary**)

99-0835

**SB 152 -LOCAL**, relative to the procedures for establishing a charter school. (Sen. D'Allesandro, Dist 20: **Education**)

99-0879

**SB 153 -FN-A**, requiring that a percentage of gross revenues from liquor sales be placed into and continually appropriated to a special fund for alcohol education and abuse prevention programs. (Sen. Gordon, Dist 2; Sen. Francoeur, Dist 14; Rep. Eaton, Graf 1; Rep. Pilliod, Belk 3: **Ways and Means**)

99-0912

**SB 154**, relative to wildlife species under the endangered species conservation act. (Sen. Wheeler, Dist 21; Sen. Cohen, Dist 24: **Wildlife and Recreation**)

99-0963

**SB 155**, relative to the naming of certain bridges in the city of Concord. (Sen. Larsen, Dist 15; Rep. Fraser, Merr 21; Rep. Hoadley, Merr 24; Rep. Bouchard, Merr 22: **Transportation**)

99-1011

**SB 156**, granting the commissioner of transportation authority to lay-out and approve the construction of a restricted use driveway onto a public highway. (Sen. F. King, Dist 1: **Transportation**)

99-0967

**SJR 1**, a resolution supporting the reduction of the sulfur content of gasoline. (Sen. Below, Dist 5; Sen. Russman, Dist 19; Sen. Cohen, Dist 24; Rep. Bradley, Carr 8; Rep. Norelli, Rock 31; **Environment**)

99-0907

**SCR 2**, a resolution urging the President and Congress to strengthen the finances of Social Security. Sen. Wheeler, Dist 21; Sen. J. King, Dist 18; Sen. McCarley, Dist 6; Sen. Larsen, Dist 15; **Insurance**)

99-0296

**CACR 16**, relating to use of statewide property and personal income taxes providing that the general court shall use net revenues from statewide property and personal income taxes exclusively for educational purposes. (Sen. Below, Dist 5; Rep. Fernald, Dist 11; Sen. Wheeler, Dist 21; Sen. Cohen, Dist 24; Sen. D'Allesandro, Dist 20; Sen. Trombly, Dist 7; Rep. Sapareto, Rock 13: **Education**)

99-0962

**CACR 17**, relating to establishing a restricted education trust fund. Providing that an education trust fund be established, that all moneys designated for the purpose of state aid to education shall be deposited into such trust fund, and that the moneys in such trust fund shall be used exclusively for state aid to education. (Sen. Larsen, Dist 15; Sen. J. King, Dist 18; Sen. Blaisdell, Dist 10; Sen. McCarley, Dist 6; Sen. Disnard, Dist 8; Sen. Trombly, Dist 7; Sen. Pignatelli, Dist 13; Sen. D'Allesandro, Dist 20; Sen. Hollingworth, Dist 23; Sen. Cohen, Dist 24; **Education**)

99-0946

**CACR 18**, relating to jury trials in child custody proceedings. Providing that there shall be a right to a jury trial in all proceedings involving child custody. (Sen. Johnson, Dist 3; Sen. Krueger, Dist 16; **Judiciary**)

99-0509

**CACR 19**, relating to 5-year renewable terms for all state judges and the age limit for state judges and county sheriffs. Providing that all state judges be commissioned for renewable 5-year terms and that there shall be no age limit for state judges and county sheriffs. (Sen. Brown, Dist 17; Sen. Roberge, Dist 9; Rep. Kennedy, Merr 7; Rep. Boyce, Belk 5; **Judiciary**)

99-0842

**CACR 20**, relating to the election of governor and senators. Providing that beginning with the 2002 general election, and every 4 years thereafter, the governor and senators shall be elected. (Sen. Wheeler, Dist 21; Sen. Cohen, Dist 24; Sen. J. King, Dist 18; Sen. Larsen, Dist 15; Sen. McCarley, Dist 6; Rep. M. Fuller Clark, Rock 36; **Internal Affairs**)

**In recess to the Call of the Chair.**

### LATE SESSION

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, and that when we adjourn we adjourn until Thursday, February 11, 1999 at 9:45 a.m.

**Adopted.**

**Adjournment.**

*February 11, 1999*

The Senate met at 9:45 a.m.

A quorum was present.

The prayer was offered by Father David P. Jones, Senate Chaplain.

Good Morning! Many long held assumptions are being challenged over here these days I understand and many sacred cows are being gored by some new realities. Just remember that in the midst of all of this, you, who are our elected leaders, you cannot not make a difference. You have a lot of options but not making some difference is not one of them. You are being forced outside of your comfort zones I imagine. Just remember, so is everybody else. You have to do a little bit of thinking outside of the box. Because I know you and trust you, I am not worried about how this will come out, whatever that is, but when you get a little frightened, just remember there is only one box outside of which you cannot think and that is a casket. Let us pray:

*Loving Lord of legislative logistics, budgets balanced beautifully and funding found fairly, drive us outside of the boxes of our fears, our prejudices, our pet projects and our mere political needs and let us think clearly, carefully, courageously, all so that our actions may make the correct difference.*

*Amen*

Senator Fraser led the Pledge of Allegiance.

### INTRODUCTION OF GUESTS

Senator Brown is excused for the day.

### VACATE MOTION

Senator Cohen moved to vacate **SB 69-LOCAL**, relative to health care charitable trusts and community benefits, from the **Executive Departments and Administration Committee** to the **Public Institutions and Health and Human Services Committee**.

**Adopted.**

**Recess.**

**Out of Recess.**

### HOUSE MESSAGE

The House of Representatives is ready to meet with the honorable Senate in Joint Convention for the purpose of hearing the budget message by the Governor, her Excellency, C. Jeanne Shaheen.

### RESOLUTION

Senator Cohen moved that the Senate now be in recess to meet in Joint Convention with the House of Representatives to hear the budget message by the Governor, her Excellency, C. Jeanne Shaheen.

**Adopted.**

**In recess for Joint Convention.**

**Out of Recess.**



### SUSPENSION OF THE RULES

Senator Cohen moved that Senate Rule 22-a be so far suspended as to allow the committee to have no recommendation on the report of **SB 51-FN-A-LOCAL**, establishing a referendum for a new taxation plan to fund public education.

**SENATOR FRANCOEUR:** Senator Cohen, could you explain to me why this bill is coming out of committee with no recommendation?

**SENATOR COHEN:** I would like to let the committee report speak to that. The people who make the committee report and, I believe, Senator Trombly is chair of the committee.

**SENATOR FRANCOEUR:** Senator Trombly, would you be so kind as to answer that question?

**SENATOR TROMBLY:** Senator Francoeur, because of the timing involved in this particular legislation, the April 1 deadline set by the court, the committee felt that it was very important that we have a public hearing on this bill and then send this over to the court for their opinion as to whether this particular process, should the legislature choose to enact this into legislation, let them rule on the constitutionality of that process. What we didn't want to get involved with is a tremendous debate on the merits of the bill itself and particularly where our intent was to send it over to the Supreme Court for their ruling interpretation as to whether or not this process would be constitutional.

**SENATOR FRANCOEUR:** Wouldn't it be more proper if the committee supported this bill to even send it over there, that they would at least take a vote out of the committee where the rules state that it should be ought to pass, inexpedient or rerefer to committee, that way there...are we sending something over to the court that the committee does not back?

**SENATOR TROMBLY:** No. I disagree with you 100 percent with you on that. I don't think that it is more proper, more expedient or the way that we should proceed with this piece of legislation. Clearly this is a piece of legislation that has been discussed in the public and we wanted to move it out of committee as quickly as possible so that the Supreme Court could rule on that. I don't think there is any detriment to the Senate, the process, or the institution by putting it forward to the Senate and saying "look, we had a public hearing on this bill and what our first intent is, the first threshold we want to reach is whether or not the legislation is indeed constitutional." So I don't think that the Senate is in any sort of way in a position not to act to send this to the Supreme Court given the fact that the recommendation of the committee is to send it to the Supreme Court.

**SENATOR FRANCOEUR:** Would I assume then if this comes back with a favorable or unfavorable recommendation from the court, that it will be referred back to the committee before it would come back to the Senate floor?

**SENATOR TROMBLY:** I would presume that, and I also believe that what would happen is that at that point, if it comes back with a recommendation, it will be referred back to Public Affairs and we would then discuss the bill within the committee and the committee would then make a recommendation pursuant to the rules and that would come back out before the full Senate and we could debate the merits and demerits of the bill then.

**SENATOR FRANCOEUR:** Thank you.

**Adopted by the necessary 2/3 vote.**

### COMMITTEE REPORT

**SB 51-FN-A-LOCAL**, establishing a referendum for a new taxation plan to fund public education. Public Affairs Committee. Sending the bill to the Supreme Court for an Opinion of the Justices. Senator Trombly for the committee.

**SENATOR TROMBLY:** Mr. President and members of the Senate, I will be very brief. I think that I explained the intent of what we wished to do in answering Senator Francoeur's question. There is a timing situation, we all know that. This simply provides for a procedure and we are asking the Supreme Court to give us a ruling whether or not the procedure contained in SB 51 is constitutional pursuant to Part I, article 28.

Senator Below moved to have **SB 51-FN-A-LOCAL**, establishing a referendum for a new taxation plan to fund public education, laid on the table.

**Adopted.**

### LAIID ON THE TABLE

**SB 51-FN-A-LOCAL**, establishing a referendum for a new taxation plan to fund public education.

Senator Below offered the following Resolution:

### 1999 SESSION

99-1016

03/01

### SENATE RESOLUTION *1*

**A RESOLUTION** requesting an opinion of the justices concerning the constitutionality of SB 51-FN-A-LOCAL.

**SPONSORS:** Sen. Below, Dist 5; Sen. Trombly, Dist 7

**COMMITTEE:** [committee]

### ANALYSIS

This senate resolution requests an opinion of the justices concerning the constitutionality of SB 51-FN-A-LOCAL.

99-1016

03/01

### STATE OF NEW HAMPSHIRE

*In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine*

**A RESOLUTION** requesting an opinion of the justices concerning the constitutionality of SB 51-FN-A-LOCAL.

Whereas, Senate Bill 51-FN-A-LOCAL, "An act establishing a referendum for a new taxation plan to fund public education," is presently pending in the senate; and

Whereas, Part I, Article 28 of the Constitution of New Hampshire states: "No subsidy, charge, tax, impost, or duty, shall be established, fixed, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature, or authority derived from that body," N.H. CONST. pt. I, art. 28 (emphasis added); and

Whereas, in Claremont School District v. Governor, 142 N.H. 462 (1997) (Claremont II), the New Hampshire Supreme Court held that the current school tax as presently structured is disproportionate and unreasonable in violation of the Constitution of New Hampshire; and

Whereas, the decision in Claremont II necessitates a major change in the tax structure of the state of New Hampshire that will have a substantial impact on the people of New Hampshire; and

Whereas, Senate Bill 51-FN-A-LOCAL establishes a procedure whereby the legislature may submit a question regarding the imposition of state-wide taxes for the funding of a constitutionally adequate education to the vote of the people by ballot and would allow the New Hampshire people to choose among tax plans enacted by the legislature; and

Whereas, that portion of Part I, Article 28 stating "without the consent of the people, or their representatives" appears to reserve a right for the people of New Hampshire to consent to taxation, and that this right is distinct from and in addition to the authority of the legislature to establish taxes; and

Whereas, Part II, Articles 2 and 5 of the Constitution of New Hampshire generally vest the power and authority to enact laws in the New Hampshire Senate and House of Representatives; and

Whereas, a public hearing has been held before the senate committee on public affairs on SB 51-FN-A-LOCAL, and a question has been raised as to whether a referendum to secure the consent of the people as to a tax plan enacted by the legislature, offered under the apparent right vested in the people in Part I, Article 28, is precluded by the power and authority vested in the legislature under Part II, Articles 2 and 5; and

Whereas, SB 51-FN-A-LOCAL raises an important question of law awaiting further consideration and action in the New Hampshire Senate; now, therefore, be it

Resolved by the Senate:

That the Justices of the Supreme Court be respectfully requested to give their opinion as expeditiously as possible on the following questions of law:

1. Would the process contained in SB 51-FN-A-LOCAL, providing for a referendum enabling the New Hampshire people to choose a tax plan enacted by the legislature to fund a constitutionally adequate public education, based on the authority and right of Part I, Article 28, be in any way repugnant or contrary to the Constitution of New Hampshire?

2. Would the process contained in SB 51-FN-A-LOCAL, providing for a referendum enabling the New Hampshire people to choose a tax plan enacted by the legislature to fund a constitutionally adequate public education be an unconstitutional delegation of legislative authority that is repugnant or contrary to the Constitution of New Hampshire?

That the clerk of the senate transmit copies of this resolution and SB 51-FN-A-LOCAL, as introduced, to the Justices of the New Hampshire Supreme Court.

SENATOR BELOW: Senate Resolution 1 is a Resolution requesting an Opinion of the Justices concerning the constitutionality of SB 51 which has been just laid on the table. Senate Bill 51 has in some ways its genesis. A year ago I introduced a similar bill in the House. When it was introduced there were questions that came up as to whether such a binding referendum as was proposed would be constitutional. At the public hearing on this bill that was discussed at some length. The crux of the issue is that back in 1881 the Supreme Court in a case called *State v. Hayes* ruled that in that case that a referendum on the enactment of legislation was unconstitutional. But the basis of that decision started off with a premise or recognition of an earlier case without a well-established



lished ground of exception the House and Senate is incapable of delegating their legislative power. But one of the basis of exception that was discussed in that case was the principle of local self government where many instances the legislature has passed laws that are subject to referendum by a subdivision of the state. I think that the sponsors of this bill believe that there may be another well grounded basis of exception in Part I, article 28 of the constitution which in essence reads, "That no tax shall be established without the consent of the people or the representatives in the legislature or authority derived from that body." A number of attorneys have looked at this and some with some constitutional experience and they believe that that in fact may be a basis for an exception to seek the consent of the people in the choice of tax plans. Without getting into the merits of the bill itself, because I think that the merits could be debated if we found that it was a constitutional process and we could then decide whether it was something that we want to consider. The feeling is that before we go to the merits of it, we need to know whether such a process may be constitutional and that is the purpose of the resolution. I would think that if anybody's vote for the resolution, SR I, would not indicate any position necessarily on the underlying legislation itself, but rather on the decision that it would be appropriate to find out whether this process would be constitutional or not.

SENATOR F. KING: Someone once said "it is a long road with no turn in it." Here we are again, nine months after this body had to decide whether or not it was appropriate to send another proposed bill over at the Supreme Court for an advisory opinion and we are being asked to do the same thing. The debate on that day became quite bitter and those who voted in favor of the motion were accused of all sorts of devious motivations. Today, I do not wish to repeat such comments. I would only say that the conversation that we had that day was bordered on being unfriendly. I could say, but I won't, that the children are getting lost in this debate. It seems to me that we are talking about our election and forgetting what our children are expecting us to do. I could say that partisan politics and selfish political ambitions must not poison the well from which our children and grandchildren drink. I could say, but I won't, that this is delay, delay, delay or I could say, but I won't, that it is unconscionable, crazy and, most of all, sad that this Senate will not accept its responsibility. I can remember how badly I felt when this discussion happened nine months ago, so I won't say that. The reason that I can't support sending SR 1 to the court is because I feel that the referendum is not the right solution to the problem, which is bearing down on us like a freight train out of control. When I was applying for this job last fall, I made it clear to my employers, the voters, that this Senate had tried to put before them, an amendment for the November election, and that effort had failed in the House and we won't have an opportunity again until the year 2000. Further, the Senate Select Committee on Education Funding and Adequacy last April suggested that a nonbinding referendum be taken on election day last November so that the citizens have a chance to speak on this issue. There was no support from either the administration or the legislature for that. Now at this late hour, somebody wanted to get out from under our sworn responsibility to make tough decisions. I am not going to question anyone's motivation. I simply say that I can't vote for this because I said when I asked for this job that I would fulfill my constitutional obligation, I would make the tough decision. In a republic, Madison said, "The principle for representing the government is that the people do not decide issues, they decide who will decide. Representatives and an assembly that can be a deliberative body." We all have spent several months learning about and



debating the issues and we are beginning to come together on a solution. We have had the time, in fact, months, in which to be a deliberative body. I agreed with my bosses, the voters, that I would assume that responsibility and take my chances. I did not say that I would turn the tough part, the casting the vote back to them. I cannot vote for a referendum; therefore, I can see no reason myself, to send it to the court for an opinion. Thank you, Mr. President.

SENATOR TROMBLY: If I may not respond to what Senator King didn't say, I would like to suggest that we are not sending this to the court and telling them that this is a process that we want to use. Indeed, what we are going to the court and saying is that we want to keep as many options to move this issue forward and open as we possibly can. I think to not to send it to the court is perhaps to deny the children of this state one possible avenue by which the only way the two branches of this legislature can come together relative to taking advantage of the Claremont opportunity. This resolution does not suggest any sense solution to that problem. It suggests a process by way we may resolve the Claremont opportunity. What happened a few months ago was this body, in a different constitution, a different makeup, decided to send a process, not a process but a solution to the Claremont opportunity to the Supreme Court. This is entirely different and the distinction needs to be made that by voting for this resolution, you are not voting for a resolution of the Claremont opportunity, you are voting for a process by which we may exercise our judgement to take advantage of the Claremont opportunity. This is not an abrogation of our legislative duty to our constituents. This is keeping the doors open to move this issue forward. This is not a step backward along the road to taking advantage of the Claremont opportunity. It is a step forward. It is only a small step because it will be our legislative responsibility then to come back and decide whether or not we even want to do it. I don't think asking the opinion of the Supreme Court on such an issue as this process under which we are seeking to take advantage of the Claremont opportunity that we should deny ourselves to leave this window and this door open. Thank you, Mr. President.

SENATOR GORDON: I also oppose the resolution. I don't disagree with Senator Trombly and that I don't think that you necessarily have to agree that the referendum is a good idea to send it over to the court to get an opinion. I think that is perfectly acceptable, but I think that we ought to have some indication as to whether or not this referendum is likely to pass whether this body is going to accept that as a potential alternative. At this point in time, it is strictly speculation as to whether we would adopt this as a means of resolving the Claremont decision. I happened to oppose the idea of a referendum. To me, it is very much like what was already attempted by the legislature in applying to the court for a two-year delay. It appears to me to be another effort to defer the responsibility of this legislature so that we won't have to make the decisions in a timely manner. We only have six weeks to make a decision. I am not as cynical as a lot of people. A lot of people out there are cynical. They are saying that we cannot do it. We cannot come up with a resolution by April 1. I am not that cynical. I am sure that we will. If anyone has followed the proceedings in the Education Committee over the last two weeks, I think that they would be encouraged that republicans and democrats have come together and had, in my opinion, the first debate in the Senate in the last four years, over what is an adequate education. They would be encouraged. I believe that it will come to a resolution, which we will come to a solution and we will come to that by April 1. The reason we will do that is because the

people demand it. There is no way that we can escape that obligation. I do not believe that the proper course of conduct for us as legislators, as the representatives of the people, is to decide what might be two alternatives and send them out to the people to vote on. I think that we have an affirmative obligation, an affirmative responsibility and I think that we accepted that responsibility in November, to make a decision that is in the best interest of this state and to do it now, by April 1. We have six weeks left. Let's do our jobs.

SENATOR HOLLINGWORTH: Senator King and Senator Gordon, I know you both and I know that you wouldn't possibly question our motives. You know that we care just as much as anyone in this room about our children and about the people who elected us to this office and the duty that we hold. I personally do not support a referendum, but I think that there is enough question out there that people are saying that we should have a referendum. I don't think that it will be constitutional. I think that it will come back that it is not, but I think to end the discussion so that we can move forward and then we won't be hearing this from certain corners of our constituency and throughout the process, we can move forward. So I will vote for it while I have some questions on it myself. I heard you say that people are saying that it couldn't be done. I remember a little poem when I was a little girl, which I still carry to this day, about speaking. I had difficulty speaking and I was sent for elocution lessons and one of the first poems that I learned was, "Somebody said it couldn't be done but he, with a chuckle, replied that maybe it couldn't but he would be one who wouldn't say so until he tried." That is like all of us, we are going to buckle right in and we are going to accomplish the thing that somebody said that couldn't be done. I believe that we will do it. Ways and Means and Finance and Education and every single person in this room, know the seriousness of their actions. I have commitments from every single one of you that you will do what is necessary and that this will be done. While I think that I heard some things that Senator King said that he wouldn't say about the commitment of those who will vote for this referendum, I believe that in his heart he knows that is not true.

SENATOR COHEN: Senator Gordon began the discussion of the content of SB 51. I think that we can do that later. What we are doing right now is discussing the process. We can debate whether or not we should have a resolution later. At this point we are trying to figure out, we are asking the court if this is a constitutionally valid tool that we can choose to pick up later. We do not know at this point in time if this is a tool that is even in our quiver. This is an important discussion and we can discuss the merits of the referendum at a later point. We can and should because there is a lot of debate about that that has to be done. We need to move the process along. April 1 is looming very quickly and this will help us move the process along. This, unlike things that have happened in the past, does not delay us; this helps us move it along and see if this is something that we can even discuss in the future. I urge my colleagues, democrats and republicans to agree on this, that we should ask the court if this is a legitimate tool that we may or may not choose to pick up.

SENATOR LARSEN: Like many of you here today, I would like to see us agree on a single plan of funding and adequate education for the children of this state. I think having come back this year, I believe that there is a greater sense of bipartisanship in an effort to in fact arrive at a single plan. I believe that we can work towards that goal, but we do in fact have to keep this legislative option open because while we may be working in a bipartisan fashion, when it comes to the Committee of Conference we

may find that we stumble. We need to know if we have an alternative and that alternative could be a referendum. That alternative could be the only way that we accede of gaining legislative consent and public consent because some of our problem is that we have to go to the public **TAPE CHANGE** to know if the referendum is a constitutional option open to us; whether or not you agree with it or not you need to know if it is an alternative. The only way to know is to ask it in a timely way. We can't wait until the end of March to find out. I urge you to send it on this day to the Supreme Court to find the answer to this question so that we can proceed on the people's business of solving education funding. Thank you.

SENATOR SQUIRES: I realize that the subject of the resolution is to decide whether to send this to the court, but I am forced into the position of answering the question in my mind if it comes back constitutional, would I vote for it? I would not. So, with your permission, I would simply like to explain why? I have approached this in three ways. I have spent a great deal of time finding out what the state of Michigan did because this approach is modeled after actions taken by the state of Michigan. I am convinced that the events and the policies and problems in Michigan do not bear any relevance to the state of New Hampshire. First of all, Michigan is one of only 14 states that is both a referendum and initiatives state for statutes and for constitutional amendments. They are a state that is used to deciding public policy issues by referendum and by initiatives. Secondly, in the state of Michigan, which was the subject of their referendum, there already existed a sales tax, an income tax and a property tax. Matters of which the electorate were intimately familiar in which, in fact, was the basis of the questions that were asked. Thirdly, there was a very long period of struggle to solve the issue leading up to the referendum, a period of approximately 20 years during which time seven ballot and constitutional proposals were rejected by the electorate, following which in 1993 the legislature abolished the property tax for education creating the problem. It was not created by the court, it was created by the legislature. At that point, they moved to the referendum. Now the wording of this bill is interesting. I would just like to read to you what proposals were. The first plan was to increase the sales and use a different tax rate, reduce the income tax and impose a two percent real estate tax, raise the cigarette tax by 50 cents, institute a video keno lottery game, create a new tax on phone calls and increase the single business tax. That was the substance of what the voters of Michigan were asked. We have absolutely no experience in the public discussion of a legislative initiative of that complexity, which is what we are going to have to do. Secondly, we are not as has been pointed out, a referendum state. Quite the contrary. Finally, what kind of a state are we? We are a representative democracy as has been pointed out. I would leave you with one quote from President Kennedy and here is what he said about problems like this, "The voters have selected us because they have confidence in our judgement. This means that we must on occasion lead, inform, correct and sometimes ignore, constituent opinion if we are to exercise fully that judgement for which we are elected." For those reasons, Mr. President, I cannot support this approach nor the sending to the court. Thank you.

SENATOR FERNALD: I want to speak in favor of the resolution. Several weeks ago the governor brought up the idea of a referendum and it has been a point of discussion. I think that it makes sense that we send this to the court so that we know whether it is an option that we have. Senator Gordon has said, "Well we should know how much support that there



is for the idea before we decided whether to find out whether it is constitutional." I would say actually that I think the reverse is true in that we obviously don't want to vote for something unless we know that it is constitutional. We determine it is constitutional first and then find out if it is supported. Since the idea has been floated, a number of people have said this is an attempt by the legislature to avoid their obligations that we're abdicating our responsibility. I want to set the record straight that that is not at all what would be intended if we do the referendum as spelled out in this bill. The idea here as spelled out in the bill, is a referendum where the legislature has acted. We have all voted, we have all gone on record, and I believe that the governor goes on record, at least she either signs it or she lets it pass without signature. And that it would be a bill that would have two options for raising the revenue to satisfy the state's obligation to fund adequate education and it would indicate which is the preferred alternative of the legislature, so again, we are on record as to what we think is the best choice, but we put it to the people and say "If you don't select the best choice that we feel is best, then you are going to get what we think is the second best choice." I do not see anywhere in this process that we have abdicated our responsibility to the people of New Hampshire. I want to say a couple of comments about what Senator Squires said. He suggested that because we are not a referendum state that we are not used to this process and that I guess that we can't handle it. I would say that I do not think that is true. We obviously have direct vote on constitutional amendments. We are a town meeting state, which Michigan is not, I believe. The people of New Hampshire are very much used to voting themselves on the important issues in their lives and I think that this is one that they handle if we decide to send it to them, which of course is a question for another day. Thank you.

SENATOR FRASER: Mr. President and my colleagues in the Senate, I had no intention of speaking on this issue today, but I guess I need to stand and explain my position as to why I am going to oppose this proposal. One of the things that was asked of me by the press when I was in the primary campaign was why I wanted to be elected and sent back to Concord? What I said at the time was, "I would like to be part of the solution of Claremont II, not part of the problem." As far as I am concerned, Mr. President, to embrace what is contained in this proposal is nothing more than a delaying tactic. When I campaigned, I did not campaign on the idea that I was going to get elected by my constituents and then I was going to send them a referendum. I told them that I would solve the problem. I promised my constituency that I would do that. In reading various press clippings about the various campaigns that my colleagues in the Senate had, I don't remember any of them saying that they wanted to be elected so that they could refer two various programs to fund education back to their constituency. There are two issues involved here. 1) Adequacy. 2) Funding. As far as I am concerned, the sooner that we get at it, the better off that we are going to be. It is going to take a mix of republicans and democrats to get this done. There is no question in my mind about that. Neither party is going to be able to sustain the burden of proof if we don't have unity among this group. By doing this kind of thing that you are doing this morning, I think that clearly this is going to be along the party lines. I am not as eloquent as my dear friend Rick Trombly, but I am telling you that by doing this kind of thing today, you are kind of drawing the line between republicans and democrats. We have a huge, huge problem to address here and to delay it by sending it over to the Supreme Court, I think, is wrong. It is basically wrong and I hope that you vote against it.



SENATOR DISNARD: I rise to ask the Chairman of the Senate Education Committee a question. Senator McCarley, I am concerned about everyone talking about a delay. So I would like to ask you a question. Whether or not we agree with a referendum, if we send this SR 1 to the Supreme Court, will the Education Committee still work on solving the Claremont situation in the meantime? Are you planning on stopping all work?

SENATOR MCCARLEY: I certainly have no thoughts for stopping anything. We don't have time to talk about stopping anything, not only in terms of what Senate Education is going to hopefully do this afternoon and be able to speak to next week in this session, on the cost of an adequacy bill, but I also have been fortunate enough to be asked to serve on Finance this year. I have every intention if they send me something, I am ready to go to work to figure out what we are going to do. So I don't see any work stopping whatsoever because the reality is that I am going to vote on something before April 1. I am going to speak my mind and I am going to vote on something. I do not know if I have any intentions on voting for two things if I have choices. I am going to vote on a solution; therefore, to me, this is an easy vote. We can find this out but I am prepared to solve it. I do not see this as getting in the way of my work on solving anything.

SENATOR DISNARD: So there will be no delay in the process if this SR 1 passes?

SENATOR MCCARLEY: Correct.

SENATOR J. KING: I think that I remember the guy who used the word "delay, delay, delay," it was myself! At that time it was the process. It was the process that was being used and it was the bill that was going forward. Today, we want to do this so that it won't be delayed, delayed, delayed.

SENATOR GORDON: Senator McCarley, this is a follow up to Senator Disnard's question that I am under the impression having been working with you and Senator Disnard in the Education Committee that we are coming up with one proposal. I guess my question is are you intending to come up with two proposals?

SENATOR MCCARLEY: As I just said, I am prepared to vote on "a" plan to solve Claremont. I have been very straightforward in the earlier question. From my perspective, if we get to a point where there are two plans that we could choose to vote for, I am prepared to just vote for one of them. If both plans get 51 percent of this group and they make it to the referendum, great. But from my perspective, I am basically committed to finding a plan that I think solves it and voting on it.

SENATOR D'ALLESANDRO: To all of my colleagues, I think that Senator Squires articulated a series of events that really are worthy of thinking about. Having been a history teacher, initiative referendum and recall really moved to the West and we are not familiar with it in this part of the country, but as elected representatives, we have a responsibility to look at every option. I don't support a referendum, but asking the court if a referendum is acceptable is a reasonable and really wise thing to do at this point. If we limit ourselves in any way, we limit getting to the solution of a problem; we all want that problem solved. We hope that problem is going to be solved in a bipartisan manner. I am sure that working diligently we can do that. I serve on the Education Committee. My comments are that the Education Committee has done some very sound work in a bipartisan fashion where each member of the commit-

tee has been able to articulate their views and we will work on that and we will bring something to the Senate and hope to bring something forward to the House. But by saying no to the referendum, what we do is just eliminate another possibility. We will have ample opportunity to discuss a referendum when we get the decision back from the court. I support the motion to move forward and hope that we do that expeditiously because time is fleeting and the longer that we spend debating the less time we have for action. Thank you.

SENATOR PIGNATELLI: I hadn't planned to speak on this issue and I respect the numbers of people who have spoken and they have caused me to have some interesting thoughts; however, no one has spoken about what my fears are and why I am going to vote for this as a possible solution. My fear is that the Senate is going to come up with its plan and it is going to hopefully have bipartisan support and the House is going to come up with their plan and it will probably have bipartisan support and maybe not, but whatever it is, it will pass. My concern is that when we get into the Committee of Conference that the plans will be different and the House will not compromise and the Senate will not compromise and we will be at loggerheads. We may need this option. Some people may say 'oh well, if we are at loggerheads then everything falls apart and the schools close.' I am not willing to say that that is the way that it ought to be if we can't come to an agreement between the Senate and the House. So I am going to keep this option open on this one particular issue, education funding. Thank you, Mr. President.

SENATOR FRANCOEUR: Senator Trombly, if the court comes back and says that a referendum is okay that we can put out a referendum question, when would you expect these people to be able to vote on it?

SENATOR TROMBLY: I don't think that I can answer that here today quite frankly because I am not certain whether or not the Senate would pass SB 51. The process that I described earlier to you involved us going to the Supreme Court and getting recommendations from the Supreme Court of a ruling as to whether or not it can be done. If it can be done it would then go back into committee and the committee recommendation may be inexpedient to legislate. So when it would happen, I can't answer that, Senator Francoeur, I don't even know if SB 51 will ever be law. Having said that, I would anticipate perhaps that Senator Below could answer that as the sponsor of SB 51, but I do think that it is a tough answer.

SENATOR BELOW: I testified in the public hearing on the bill that one possibility, one scenario might be that if, for instance, the House and Senate had very different positions and could not reach a compromise that you could take the House and Senate positions, adopt what common elements may exist to go into place on April 1 and then have a referendum as soon as possible thereafter to make the choice between the two positions. As a practical matter, that would probably take a minimum of six weeks, so the earliest that it would be is the second week in May or so. I suggest that time frame into June, but that is just one scenario. The bill itself doesn't suggest how that might play out.

SENATOR FRANCOEUR: Perhaps you could clarify for me, if we send this over to the court **TAPE INAUDIBLE** it takes two to four weeks at the best to get it, then we have to form the question and get the people to vote on it. What do we do about schools between April 1 and the time that we vote on the referendum and get back here? We are talking about shutting down for two or three months in the meantime?

SENATOR BELOW: I don't believe so and that is certainly a critical question that would have to be resolved in terms of whether this was an option to consider at that time. I think that there are possibilities of ways of resolving that so that schools would stay open and we would move forward with the definitive resolution in a timely manner.

SENATOR K. WHEELER: I think that we are losing sight of what the debate is about. Whether we support a referendum is not the issue now. It is being discussed widely, the possibility of a referendum. By sending this to the Supreme Court and getting a decision, we will be able to put that to rest and we will be able to say, "yes, we will pursue this discussion" or if they so no that it is not constitutional, then we will say "sorry, it is not an option. Let's not waste any more time discussing it." But in the meantime, we are going to carry forth and it is not a delay tactic. We are carrying forth with our finding of a solution to the issue. Just remember that it doesn't matter what the 24 of us say as much as it matters what everybody else is seeing out there discussing a referendum, and I think that we need to find out if it is even a reasonable discussion.

SENATOR FERNALD: I wanted to further address this question about what happens on April 1 if we are talking about a referendum. Again, the scenario, as I understand it, is that we would pass a bill with two options and both options would be constitutional solutions to the problem. So by April 1 the state knows that we have a solution, we just don't know which one. The other important point is that the schools tax has already been raised, the tax bills that we paid in December paid our school budgets through the end of June. There are few school districts that have tax anticipation notes, but for the most part, every school district in the state has already collected or at least the towns have already collected the money to the end of June to run the schools. So even though we have an April 1 deadline because that is the beginning of the property tax year, we have already raised the monies for the schools through the end of this school year. If we do a referendum in May or June the schools don't have to close while waiting for us to act or for the people to vote because the money is already there.

SENATOR BELOW: Just for the record, as the prime sponsor of SB 51 and SR 1, I want to make it clear that there is nothing that I would like better than to have the House, Senate and the governor agree on one taxation plan to fund an adequate education by April 1. As I think that all of you know, I have not been shy or bashful about trying to lead on this issue and speak with a proposal that I think would be a way to fairly and equitably fund education. Over a year ago I introduced legislation in the House to establish an income tax to replace the property taxes as the primary means of funding public education in New Hampshire. I campaigned very explicitly on that and in my campaign, I explicitly suggested that if the Senate and the House could not reach agreement with the governor on a single plan, that a referendum may be something to consider as a way to resolve the issue. So in that sense, I am not ready to take a position on my own bill that I have introduced. I think that it is premature to decide whether this is something that we should do or not. I think that it is time at this point in time, to find out from the court as to whether it is even an option to consider. The hope that would be that by acting today that there is the possibility that in a month or so we could know whether this is an option as we get into the waning days of March.



**Question is on the motion of ought to pass.**

**A roll call was requested by Senator F. King.**

**Seconded by Senator Francoeur.**

**The following Senators voted Yes: Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Pignatelli, Larsen, J. King, D'Allesandro, Wheeler, Hollingworth, Cohen.**

**The following Senators voted No: F. King, Gordon, Johnson, Fraser, Roberge, Squires, Francoeur, Krueger, Russman, Klemm.**

**Yeas: 13 - Nays: 10**

**Adopted.**

### **VACATE MOTION**

**Senator Cohen moved to vacate SB 108, relative to the dispensing of medications by optometrists, from the Executive Departments and Administration Committee to the Public Institutions and Health and Human Services Committee.**

**Adopted.**

### **ANNOUNCEMENTS**

#### **RESOLUTION**

**Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, all bills ordered to third reading be by this resolution read a third time and passed.**

**Adopted.**

### **LATE SESSION**

#### **RESOLUTION**

**Senator Cohen moved that the business of the day being completed, that the Senate be in recess for the sole purpose of introducing legislation, printing of bills, referring bills to committee, scheduling committee hearings and Enrolled Bills Reports and amendments and that when we adjourn we adjourn to Thursday, February 18, 1999 at 10 a.m.**

**Adopted.**

**In recess.**

**Out of Recess.**

### **INTRODUCTION OF SENATE BILLS**

**Senator Cohen offered the following Resolution:**

**RESOLVED, that in accordance with the list in the possession of the clerk, Senate Bills numbered 157-CACR 20 shall be by this resolution read a first and second time by the therein listed titles, laid on the table for printing and referred to the therein designated committees.**

**Adopted.**

### **First and Second Reading and Referral**

**99-0221**

**SB 157, clarifying that a prisoner's right to vote absentee is in his or her town or city of former residence. (Sen. Larsen, Dist 15; Sen. D'Allesandro, Dist 20; Sen. Fraser, Dist 4; Sen. F. King, Dist 1; Rep. Gile, Merr 16; Rep. Rosen, Belk 7; Rep. Emerton, Hills 7; Rep. Mears, Coos 7; Rep. Seldin, Merr 17: Public Affairs)**



99-0321

**SB 158 -FN**, relative to indecent exposure. (Sen. J. King, Dist 18; Sen. Trombly, Dist 7; Rep. Stritch, Rock 5; Rep. Dwyer, Hills 43: **Judiciary**)

99-0456

**SB 159**, relative to early reduction of greenhouse gases. (Sen. Cohen, Dist 24; Sen. Russman, Dist 19; Sen. Below, Dist 5; Rep. Bradley, Carr 8; Rep. Norelli, Rock 31; Rep. Konys, Hills 33: **Environment**)

99-0542

**SB 160**, establishing a committee to study and identify or establish the duties of the fish and game commission. (Sen. Disnard, Dist 8; Sen. Trombly, Dist 7; Rep. Abbott, Rock 19; Rep. Blaisdell, Ches 19: **Wild-life and Recreation**)

99-0550

**SB 161-LOCAL**, relative to amending the contributory pension system for employees of the city of Manchester. (Sen. D'Allesandro, Dist 20; Sen. J. King, Dist 18; Sen. Blaisdell, Dist 10; Rep. Buckley, Hills 44; Rep. Vaillancourt, Hills 44: **Insurance**)

99-0601

**SB 162**, establishing the voluntary small employer health insurance purchasing alliance. (Sen. Fraser, Dist 4; Sen. Trombly, Dist 7: **Insurance**)

99-0786

**SB 163**, establishing a commission to study methods for reducing violent incidents involving children and guns. (Sen. Cohen, Dist 24; Sen. Trombly, Dist 7; Sen. Johnson, Dist 3; Rep. Welch, Rock 18; Rep. Pepino, Hills 40; Rep. M. Fuller Clark, Rock 36; Rep. Konys, Hills 33; Rep. Buckley, Hills 44: **Judiciary**)

99-0557

**SB 164**, relative to persons exempted from the registration of ophthalmic dispensers. (Sen. McCarley, Dist 6; Sen. J. King, Dist 1; Rep. Copenhaver, Graf 10: **Public Institutions, Health and Human Services**)

99-0875

**SB 165**, relative to the Uniform Trustees' Powers Act. (Sen. Gordon, Dist 2; Rep. Millham, Belk 4: **Judiciary**)

99-0904

**SB 166**, requiring insurance coverage for certain physical, occupational, and speech therapies. (Sen. Squires, Dist 12: **Insurance**)

99-0908

**SB 167**, relative to off-label prescription drugs. (Sen. Wheeler, Dist 21; Rep. M. Fuller Clark, Rock 36; Rep. C. Moore, Merr 19: **Insurance**)

99-0968

**SB 168**, adopting a model statute as a result of the tobacco litigation master settlement agreement. (Sen. Below, Dist 5: **Ways and Means**)

99-0991

**SB 169-FN-A**, establishing a commission to study the department of health and human services and making an appropriation therefor. (Sen. Hollingworth, Dist 23; Sen. J. King, Dist 18; Sen. F. King, Dist 1; Rep. Torr, Straf 12: **Public Institutions, Health and Human Services**)

99-1009

**SB 170-FN-A**, establishing a parents as teachers pilot program in Sullivan county and making an appropriation therefor. (Sen. Wheeler, Dist 21; Sen. Disnard, Dist 8; Sen. McCarley, Dist 6; Rep. Allison, Sull 10; Rep. Durham, Hills 22; Rep. Estabrook, Straf 8; Rep. M. Smith, Straf 8: **Education**)

99-0579

**SB 171-FN**, relative to homelessness in New Hampshire. (Sen. D'Allesandro, Dist 20; Rep. Garrish, Hills 37: **Public Institutions, Health and Human Services**)

99-0731

**SB 172**, relative to representation by a citizen in a court proceeding. (Sen. Roberge, Dist 9; Sen. Johnson, Dist 3; Rep. Pepino, Hills 40; Rep. Mirski, Graf 12; Rep. Richardson, Ches 12; Rep. Hunter, Hills 7; Rep. L. Jean, Hills 17: **Judiciary**)

99-0832

**SB 173-FN**, relative to optional allowances for beneficiaries of the New Hampshire retirement system members. (Sen. J. King, Dist 18; Sen. Hollingworth, Dist 23; Sen. Trombly, Dist 7; Rep. Dyer, Hills 8; Rep. Dwyer, Hills 43: **Insurance**)

99-0837

**SB 174**, relative to the regulation of telemarketers. (Sen. Disnard, Dist 8; Sen. Blaisdell, Dist 10; Rep. Flint, Sull 4; Rep. Leone, Sull 2; Rep. Turner, Belk 7; Rep. Russell, Ches 15: **Executive Departments and Administration**)

99-0844

**SB 175-FN**, requiring insurance coverage for prescription contraceptive drugs and devices and for contraceptive services. (Sen. Wheeler, Dist 21; Sen. Squires, Dist 12; Sen. Larsen, Dist 15; Sen. Russman, Dist 19; Rep. M. Fuller Clark, Rock 36; Rep. Norelli, Rock 31; Rep. Keans, Straf 16; Rep. Hager, Merr 18: **Insurance**)

99-0913

**SB 176-FN-A**, relative to technology support for individuals and making an appropriation therefor. (Sen. Hollingworth, Dist 23; Sen. J. King, Dist 18: **Public Institutions, Health and Human Services**)

99-0936

**SB 177**, allowing marriage and family therapists to obtain third party payment for services rendered which would otherwise qualify for such payments. (Sen. Wheeler, Dist 21; Rep. C. Moore, Merr 19: **Insurance**)

99-0956

**SB 178-FN-A**, appropriating funds for mitigation relative to the dredging of Little Harbor. (Sen. Cohen, Dist 24; Rep. Cox, Rock 24: **Environment**)

99-0961

**SB 179-FN**, allowing for motor vehicle license suspension or revocation for certain minors. (Sen. Wheeler, Dist 21: **Transportation**)

99-0960

**SB 180**, establishing a committee to study the improvement of employment opportunities offered by the state of New Hampshire for persons with disabilities. (Sen. Trombly, Dist 7; Sen. J. King, Dist 18; Rep. Torr, Straf 12; Rep. Thomas, Belk 3: **Executive Departments and Administration**)

99-0470

**SB 181-FN**, relative to the licensure of geologists. (Sen. Cohen, Dist 24; Sen. Roberge, Dist 9; Rep. Wendelboe, Belk 2: **Executive Departments and Administration**)

**Recess.**

**Out of Recess.**

### HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 54**, allowing simultaneous service of a demand for rent and a notice to quit.

**HB 75**, changing the number required for a quorum on the commission for human rights.

### HOUSE MESSAGE

The House of Representatives has passed Bills and a Resolution with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 60**, relative to meetings of the ballot law commission.

**HB 73**, extending the reporting date of the commission to study the effects of and jurisdiction over alternative agricultural products.

**HB 93**, permitting a dam to be constructed on Rand Pond in Goshen.

**HB 207-FN-A**, directing the office of state planning to conduct a study of the effects of sprawl in the state and making an appropriation therefor.

**HB 227**, establishing a committee to study the maintenance of voter checklist.

**HB 228**, clarifying permissible political expenditures.

**HB 231**, relative to approval of applications in the charter schools pilot program.

**HB 240**, prohibiting the reintroduction of wolf populations to the state of New Hampshire.

**HB 248**, relative to the Monadnock advisory commission.

**HB 249**, relative to the membership of the rivers management advisory committee.

**HB 295-FN-L**, relative to alternative kindergarten programs in cooperative school districts.

**HJR 1**, requesting that the federal government prohibit the U.S. Fish and Wildlife Service or other federal agency from introducing wolf populations to the northeastern United States, especially New Hampshire.

### INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

**RESOLVED**, that in accordance with the list in the possession of the Clerk, House Bills numbered 54-HJR 1 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

**Adopted.**

**First and Second Reading and Referral**

**HB 54**, allowing simultaneous service of a demand for rent and a notice to quit. **Public Affairs.**

**HB 75**, changing the number required for a quorum on the commission for human rights. **Executive Departments and Administration.**

**HB 60**, relative to meetings of the ballot law commission. **Executive Departments and Administration.**

**HB 73**, extending the reporting date of the commission to study the effects of and jurisdiction over alternative agricultural products. **Wildlife and Recreation.**

**HB 93**, permitting a dam to be constructed on Rand Pond in Goshen. **Environment.**

**HB 207-FN-A**, directing the office of state planning to conduct a study of the effects of sprawl in the state and making and appropriation therefor. **Environment.**

**HB 227**, establishing a committee to study the maintenance of voter checklist. **Public Affairs.**

**HB 228**, clarifying permissible political expenditures. **Public Affairs.**

**HB 231**, relative to approval of applications in the charter schools pilot program. **Education.**

**HB 240**, prohibiting the reintroduction of wolf populations to the state of New Hampshire. **Wildlife and Recreation.**

**HB 248**, relative to the Monadnock advisory commission. **Executive Departments and Administration.**

**HB 249**, relative to the membership of the rivers management advisory committee. **Environment.**

**HB 284-L**, relative to recount procedures in school districts. **Public Affairs.**

**HB 295-FN-L**, relative to alternative kindergarten programs in cooperative school districts. **Education.**

**HJR 1**, requesting that the federal government prohibit the U.S. Fish and Wildlife Service or other federal agency from introducing wolf populations to the northeastern United States, especially New Hampshire. **Wildlife and Recreation.**

**LATE SESSION****RESOLUTION**

Senator Cohen moved that the business of the day being completed that the Senate now adjourn until Thursday, February 18, 1999 at 10:00 a.m.

**Adopted.**

**Adjournment.**

*February 18, 1999*

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by the Rev. David P. Jones, Senate Chaplain.



*Here stands the Senate, O Lord. Pry their minds open so that they may think big thoughts. Unplug their ears so that they may hear words besides their own. And give them each voices to speak with eloquence, honesty and authenticity—for we are all listening, and so are You. Amen.*

Senator Below led the Pledge of Allegiance.

Senator Klemm is excused for the day.

## INTRODUCTION OF GUESTS COMMITTEE REPORTS

**SB 48-FN-L**, relative to establishing an adequate education and education financing reform commission and relative to state grants for educational adequacy for fiscal years 2000 and 2001, and making an appropriation therefor. Education Committee. Vote 9-0. Inexpedient to legislate, Senator Larsen for the committee.

**SENATOR LARSEN:** Senate Bill 48 was one of three educational adequacy bills that was brought before the Senate Education Committee in response to the Claremont decision. The bill envisioned an 80 - 20 split in educational costs between the state and the local school districts. The Education Committee voted unanimously to recommend this bill as inexpedient to legislate. Senate Bill 48 was very well thought out with specific provisions that attracted support. Overall, the committee felt that the percentage split between state and local-funding responsibilities would not pass constitutional muster. Ultimately, many of the features of SB 48 were incorporated into SB 49. The sponsors of both bills worked together to construct a consensus bill that selected the best and most appropriate elements from each bill. Senator Squires was the sponsor of SB 48 and has signed onto the amended version of SB 49. To give you some examples, among some of the features of SB 48 that we have added to our amended version of SB 49 are the recognition that communities are dealing with economic disadvantage and the need to add a weighting factor based on the number of children who receive free and reduced lunch. We also recognized, like SB 50, that special education requires a new system of reimbursement that does away with the weighting system and instead tries to cover more of the actual costs incurred by school districts. The committee voted SB 48 inexpedient to legislate knowing that the strengths of SB 48 are preserved in the consensus bill, which follows. I urge inexpedient to legislate.

**Committee report of inexpedient to legislate is adopted.**

**SB 49-FN-A-L**, relative to establishing the cost of an adequate education, and relative to creating a commission to study the methodology used in establishing the cost of an adequate education, and making an appropriation therefor. Education Committee. Vote 7-2. Ought to pass with amendment, Senator McCarley for the committee.

**1999-0145s**

**04/09**

### Amendment to SB 49-FN-A-LOCAL

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose; Intent.

I. In December 1997, the New Hampshire supreme court in the Claremont II decision ruled that it is the state's duty to define and provide all New Hampshire's public school students with an adequate

education, and further that the manner of raising revenue to pay for an adequate education be through a system of taxation that is proportional in substance and just and reasonable in application.

II. Through the passage of House Bill 1075, the general court defined an adequate education. The definition grew out of work undertaken in the early 1990's to develop curriculum frameworks which specifically address the importance of establishing and measuring what all New Hampshire students should know and be able to do. The curriculum frameworks were developed with the widespread participation of educators, business people, government officials, community representatives, and parents. They have evolved into a critical component of providing a quality public education to New Hampshire students.

III. The New Hampshire educational improvement and assessment program ("NHEIAP") tests were developed in conjunction with the curriculum frameworks as a measure of student performance. The general court therefore finds that the NHEIAP tests are a measure of student performance and can be used to develop and implement effective methods for assessing learning and its application. The general court further finds that in determining the cost of a constitutionally adequate education, performance based outcome criteria, specifically the NHEIAP test scores, can be used to identify school districts that are delivering such a constitutionally adequate education. The NHEIAP tests are comprehensive and difficult. Students taking these tests in the third, sixth, and tenth grades are scored on 4 levels of performance: novice, basic, proficient, and advanced. The general court finds that students who score in the basic, proficient, and advanced levels on these state tests are making progress toward achieving the goals set forth in House Bill 1075. The general court also finds that school districts that have 40 to 100 percent of students scoring at or above the basic level are providing an adequate education. As such, in determining the cost of an adequate education, the general court includes all school districts with 40 to 100 percent of students scoring at or above the basic level. Furthermore, each school district shall receive 70 percent of its total transportation costs. Each school district shall receive special education costs as defined in this act.

IV. The general court recognizes the inherent imprecision, subjectivity, and difficulty in determining the cost of an adequate education. Numerous complex financial, budgetary, administrative, and educational elements must be in place in order for the state to fully meet the mandates of Claremont II. Those mandates coupled with the policy of the state recognize that an adequate public education is not a static concept removed from the demands of an evolving world. An adequate education transcends mere competence in the reading, writing and arithmetic. Such an education shall provide all students with a meaningful opportunity to acquire the knowledge and skills necessary to prepare them for successful participation in the social, economic, scientific, technological, and civic realities of society, now and in the years to come. To ensure these fundamental rights, as recognized by the court, thoughtful and deliberate planning with the involvement of many sources of expertise as well as phased-in implementation of the major elements over time is required. Concomitantly, such planning and implementation is required in order to ensure:

(a) That the educational needs of all children are met, including regular education students, students with special needs such as students with disabilities, students who are economically disadvantaged or are otherwise educationally at risk, or those who are intellectually gifted;

(b) That the needed changes are long-term in nature, truly embedded on the local and state level, gain acceptance and are both cost and educationally effective, and to those ends address underlying or systemic issues; and

(c) Compliance with all applicable federal laws.

V. Under Claremont II, and as recently reaffirmed by the court in its November 1998 opinion, a constitutionally adequate education funding system must be in place for the beginning of the 1999 tax year, that is April 1, 1999.

VI. Therefore, in order to meet the aforementioned competing requirements of a long-range, carefully planned, and phased-in solution and to address the need to have an acceptable system in place by April 1, 1999, this act establishes a special commission to develop long-term plans and solutions to comprehensively and permanently meet constitutional mandates and details the amount of funding and allocations between the state and the local school districts of the 1999-2000 and 2000-2001 school years. While the initiative for 1999-2000 does not by necessity constitute a full and comprehensive resolution, it significantly approximates compliance with the constitutional mandates articulated by the court in Claremont II and represents a good faith and substantial effort and significant accomplishment on the part of the legislature and governor in performing their respective roles as the 2 other co-equal branches of state government.

2 New Subdivision; State Aid for Educational Adequacy. Amend RSA 198 by inserting after section 37 the following new subdivision:

State Aid for Educational Adequacy

198:38 Definitions. In this subdivision:

I. "Municipality" means a city, town, or unincorporated place.

II. "Elementary school" means a school with any of the grades kindergarten through 8.

III. "High school" means a school with any of the grades 9 through 12.

IV. "Base expenditure per pupil" for each school district that operates an elementary school means the amounts calculated in accordance with RSA 198:39, I and III.

V. "Average base cost per pupil" means average base cost per pupil as calculated in accordance with RSA 198:39, II and III.

VI. "Weighted pupil" means a resident pupil who has been assigned to one of the following classifications, based on the type of education the pupil received:

(a) An elementary pupil, which shall include kindergarten pupils, 1.0, except as provided for in subparagraph VI(c) of this section.

(b) A high school pupil, 1.14, except as provided for in subparagraph VI(d) of this section.

(c) An elementary pupil who receives a free or subsidized lunch, 1.1.

(d) A high school pupil who receives a free or subsidized lunch, 1.25.

VII. "Educationally disabled child" shall be as defined in RSA 186-C:2, I.

VIII. "Consumer price index" means the most recent available consumer price index for the Boston metropolitan area published by the United States Department of Labor.

IX. "Special education costs" means the 1997-98 cost of special education reported by school districts on the MS-25 form less any federal funds and state general fund revenues received by the district for special education.

X. "Average daily membership in attendance" means the aggregate half-day membership of the students in attendance divided by the number of half-days actually in session for a given school district in a given school year.



XI. "Average daily membership in residence" means the average daily membership of students enrolled in public schools within the district or students whose tuition is being paid by the district to another approved public or private school for a given school district in a given school year.

198:39 Methodology for Calculating the Cost of an Adequate Education.

I. The department of education shall calculate the base expenditure per pupil for each school district that operates an elementary school by subtracting from the total expenditures at the elementary school level, tuition to other school districts or approved educational programs, capital costs and debt service on such costs, special education costs, food service costs, transportation costs, and state and federal revenues not otherwise deducted. For each school district, this amount shall be divided by the average daily membership in attendance at the elementary school level to attain the base expenditure per pupil.

II. The cost of an adequate education shall be calculated as follows:

(a) The department of education shall identify those school districts where 40 to 100 percent of the elementary pupils enrolled in the grades tested on the day testing began, achieved a scaled score, in the statewide improvement and assessment program administered pursuant to RSA 193-C, in all areas tested, equivalent to performance at the basic level or above.

(b) From the school districts identified in subparagraph II (a) of this section, the department of education shall then identify those school districts that have the lowest base expenditure per pupil as calculated pursuant to paragraph I and which represent, as nearly as possible, 50 percent of the average daily membership in attendance at the elementary level of the school districts identified in subparagraph II(a) of this section.

(c) The department of education shall calculate the average base cost per pupil of an adequate education at the elementary school level by multiplying the base expenditure per pupil of each school district identified in subparagraph II(b) of this section by the average daily membership in attendance at each of the selected school districts, and add the results across all districts selected. This sum shall then be divided by the total average daily membership in attendance at the elementary school level in all of the selected school districts.

III. The methodology set forth in paragraphs I and II of this section shall also be used to calculate the reported total expenditures for high school pupils.

IV. The statewide cost of an adequate public education for elementary and high school pupils shall be calculated by multiplying the average base cost per pupil of an adequate education at the elementary school level by the weighted number of the average daily membership in residence of pupils statewide and then adding special education costs plus 70 percent of total district transportation costs statewide. All such costs shall be adjusted annually for inflation in each year of distribution using the latest consumer price index in the year of distribution.

V. For the biennium ending June 30, 2001, the department of education shall use financial information and average daily membership information reported to it by local school districts for the 1997-1998 school year and the statewide education improvement and assessment program scores from 1998 in calculating the cost of an adequate education.

198:40 Per Pupil Cost of an Adequate Education; Distribution and Payments to School Districts.

I. Except for municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions,



the state shall pay annually to each municipality an amount of money that is equal to the weighted average daily membership in residence multiplied by the base cost per pupil of an adequate education at the elementary school level plus the school district's special education costs plus 70 percent of the school district's transportation costs. All such costs shall be adjusted annually for inflation in each year of distribution using the latest consumer price index in the year of distribution.

(a) Each school district's grant shall be calculated by using the following formula:

(The weighted average daily membership in residence multiplied by the base cost per pupil of an adequate education at the elementary school level) plus the school district's special education costs plus 70 percent of the school district's transportation costs. All such costs shall be adjusted annually for inflation in each year of distribution using the latest consumer price index in the year of distribution, less any federal funds or state general fund revenues received by the district for special education.

II. For municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the state shall pay annually to each municipality the lesser of the following 2 calculations:

(a) The amount calculated in accordance with subparagraph I (a) of this section; or

(b) The total amount paid for items of current education expense as determined by the department of education.

III. The general court is constitutionally obligated to fund the cost of an adequate education, and there are hereby appropriated, for the biennium ending June 30, 2001, the funds necessary to make the payments required by paragraphs I and II of this section. The governor is authorized to draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

IV. The annual payments required by paragraphs I or II of this section shall be made over the biennium in 8 approximately equal installments. Installment payments by the state shall be made on or before July 1, October 1, January 1, and April 1 of each year of the biennium.

V. The annual payments required under paragraphs I and II of this section shall be made to municipalities. Each municipality receiving a payment shall, within 10 days of receipt, pay the money over to the municipality's school district or districts.

198:41 Adequate Education and Education Financing Reform Commission Established; Membership.

I. There is hereby established an adequate education and education financing reform commission which shall be composed of 23 members as follows:

(a) The chairperson of the house education committee, appointed by the speaker of the house.

(b) The chairperson of the senate education committee, appointed by the president of the senate.

(c) Two members appointed by the governor.

(d) The commissioner of the department of revenue administration or designee.

(e) The commissioner of the department of education or designee.

(f) The commissioner of the department of health and human services or designee.

(g) The chancellor of the university system of New Hampshire or designee.

(h) The commissioner of the regional community-technical college system.

(i) One member from the state board of education, appointed by the chairperson of the state board of education.

(j) One member from the New Hampshire Municipal Association, appointed by the chief executive officer of the association.

(k) One member from a special education advocacy organization, appointed by such organization; and

(l) Eleven members who shall be agreed to and jointly appointed by the governor, the president of the senate, and the speaker of the house consisting of the following:

(1) One elementary or secondary school teacher who does not teach special education.

(2) One elementary or secondary school teacher with a special education certification who is currently providing instruction to students with educational disabilities.

(3) One local school board member, recommended by the New Hampshire School Board Association.

(4) One school administrator, recommended by the New Hampshire School Administrators Association.

(5) One special education administrator at the elementary or secondary school level, recommended by the New Hampshire Association of Special Education Administrators.

(6) Two parents of school-age children, one of whom shall be the parent of a child with an educational disability, who is a member of the Advocacy Committee for Children and Students with Educational Disabilities.

(7) One member who has expertise or is currently engaged in research on educating students; and

(8) Three members from the business community, one of whom shall be associated with the School to Work Initiative.

II. The commission shall elect a chairperson from among its membership and may form subcommittees as it deems necessary to perform its duties. The chairperson shall determine the frequency of meetings at its first meeting.

III. The members of the commission shall serve without compensation, provided that legislative members of the commission shall receive mileage at the legislative rate while attending to the duties of the commission, and provided that the parent members of the commission shall be reimbursed for travel expenses associated with their duties on the commission.

IV. In order to ensure that all students are provided an adequate education, the duties of the commission shall be as follows:

(a) Determine the costs of an adequate education for all students in New Hampshire by determining and calculating adjustments for individual school districts based on yearly inflation, cost of living variances, diseconomies of scale, transportation variability, demographics, including for school districts with a disproportionate number of students who are economically disadvantaged or have educational disabilities, and such other factors as deemed relevant.

(b) Determine the amount of state aid, including building aid, to be distributed to cities and towns based upon the cost of an adequate education as set forth in subparagraph (a) and the method for distributing the state aid.

(c) Study and determine whether and what further changes or new measures are necessary in:

(1) Aspirational education goals, minimum education standards, curriculum frameworks, and indicators and methods assessing student and school performance and success.

(2) State educational regulations and policies.

(3) Infrastructure on the school, school district, and state level including but not limited to such areas as:

(A) Training of teachers, aides and other education personnel at institutions of higher education in New Hampshire, and on the preservice training, in-service training, and continuing educational levels.

(B) Strategies to attract qualified educational and related services personnel especially in disciplines in which shortages exist.

(C) Availability and quality of technical assistance available to all education personnel and other supports to teachers and students alike for the purpose of promoting best practices in instruction and learning for all students.

(D) Student-teacher ratios.

(E) Parental involvement.

(F) Interagency or wrap-around collaboration for students whose needs require services from several agencies.

(d) Interim and permanent processes to ensure adequate planning and implementation on the local and state level, including on an inter-agency basis, to ensure that reforms are properly implemented, such as planning for and development of local school based options for students who have been placed in alternative or separate schools who could be placed back in appropriate less restrictive options if available.

V. The commission shall be divided into the following policy subcommittees: adequacy and cost, accountability, special education, and school building aid.

VI. The commission shall report its findings and recommendations no later than December 1, 2000. The report shall include, for each recommendation, proposed implementation schedules with timelines, specific steps, agencies and persons responsible, and resources needed. Where feasible, all plans, measures and initiatives shall be proposed as legislation or regulation so that they will have the force of law. All recommendations and plans shall be designed to be fully implemented no later than September 1, 2004.

VII. The department of justice shall provide the commission with such legal assistance as the commission deems necessary.

3 New Subparagraph; Special Education; Catastrophic Aid Payments Constitutionally Obligated. Amend RSA 186-C:18, III by inserting after subparagraph (c) the following new subparagraph:

(d) The general court is constitutionally obligated to fund the cost of an adequate education, and there are hereby appropriated, for the biennium ending June 30, 2001, the funds necessary to make the payments required in this section. The governor is authorized to draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

4 Appropriation. The sum of \$150,000 for the fiscal year ending June 30, 2000, is hereby appropriated for the purposes of the commission established in RSA 198:41 as inserted by section 2 of this act. This sum shall be nonlapsing until June 30, 2001. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

5 Repeal. RSA 198:27 through 198:37, relative to foundation aid and alternative foundation aid, are repealed.

6 Effective Date. This act shall take effect upon its passage.



1999-0145s

## AMENDED ANALYSIS

This bill:

(1) Establishes an educational adequacy and education financing reform commission.

(2) Establishes a system for calculating and disbursing state grants for educational adequacy for fiscal years 2000 and 2001 by multiplying the average base cost per pupil of an adequate education by the weighted number of the average daily membership in residence of pupils statewide and adding to that sum 70 percent of total district transportation costs and the school district's costs for special education less any federal or state moneys received to offset such special education expenses.

(3) Appropriates funds to the commission and to the department of education for the purposes of this bill.

(4) Provides that all expenses related to catastrophic special education are constitutionally mandated and shall be borne by the state.

SENATOR SQUIRES: I would like to ask your patience and forbearance for a somewhat longer presentation than normal. This is a long bill, it is an important bill and it is a complex bill. This bill is as you have just heard, a result of efforts by the Senate Education Committee to address what is an adequate education, how much does it cost and how would funds be distributed? This bill does not address the funding question, which is coming as a separate piece of legislation by way of general overview. This bill creates a commission charged to develop long-term plans and solutions to comprehensively and permanently meet constitutional mandates. It specifies for an interim period of time, funding levels for school districts. The interim periods being 1999 to 2000 school year and school year 2000 to 2001. It specifies a distribution for school districts for the same two years again on an interim basis. It is, I think, fair to say that in parts of this bill the committee achieved unanimity and in other parts it did not. First the Commission: The idea that of a Commission is an area in which there was no substantial disagreement either among members of the Education Committee or from the public. The reasons for the committee are stated on page 2 of the bill. I would like to add and emphasize the committee's continued frustration with data. There is in fact a difficulty with data that any person would use to establish a logical and reasonable link between the definition of adequacy and its cost. On a good day, the data is frequently erratic; on an average day it is often incomplete, and on a bad day it is regularly non-existent. The proposed commission numbers 23 and is designed to be diverse as set forth within the bill. The bill requires the commission to form four policy subcommittees to address the following areas: 1) Further refine and define the relationship between the definition of adequacy and its cost. 2) Examine ways to make our system of public education more accountable to the citizens of the state. 3) Examine issues related to special education. 4) Review, evaluate and perhaps improve the present system of building aid. The findings and recommendations of this commission shall be reported no later than December 1, 2000. The bill further stipulates that whenever feasible, the commission's findings shall be proposed as legislation or regulations which shall be designed in such a manner as to become fully implemented by September 1, 2004. Finally, as far as the commission is concerned, the bill asks for an appropriation of \$150,000 from the general fund to provide the necessary financial resources for this difficult and complex task. The Second: Funding Levels: Here, the committee did not reach unanimity. How does one



go about the problem of determining the cost of an adequate education? In general there are two ways: Inputs - which can be the state's minimum standards. It could be something called the market-basket approach in which you select what you believe to be the best characteristics of schools. Outputs - Or you can take some characteristics of the present system and attach to them a cost. The other way to go about it is to look at what is the system producing? In this case, what happens to the students? What are the abilities of the students coming forth from our system of public education? The bill contains an approach using the latter. It samples the school districts of New Hampshire using criteria based on the standards achievement tests that are given to the students who participate in the New Hampshire Educational Improvement and Assessment Program. If you do that, you get 58 districts in elementary schools out of a total of 178 and these ranged in student populations from 24 in Croydon to 10,887 in Manchester. Then if you move to secondary schools you get 20 districts ranging in size from 253 in Epping to 5,378 in Manchester and Nashua is included also in the secondary districts. The per pupil costs of these districts will then determine after which the per pupil costs is multiplied by the average daily membership in the state of New Hampshire as reported to the Department of Education. The resulting calculation produces what is known as the "base" expenditure per pupil." To this base, the bill then adds the entire costs of special education and 70 percent of the district's transportation costs. Point three: Distribution: 1) Funds are distributed to the districts in four ways: 2) Each district receives an amount equal to the base expenditure per pupil although secondary schools receive a weighted adjustment of 1.4. Each district receives an amount of special education equal to the district's expenditure for the 1997-1998 school year. These are adjusted annually for inflation using the consumer price index. 3) Each district receives an amount of transportation equal to 70 percent of its district's expenditures in the preceding year, again, adjusted for expenditures. 4) Each district receives an additional amount for children who are economically disadvantaged as measured by the number of pupils that receive reduced or free lunches. One final note, the bill continues the present system of Catastrophic Aid Payments. I recognize the fact that this bill, if passed, will be sent to the Senate Finance Committee. The Education Committee believes that the costs contained within this proposed piece of legislation are approximately \$950,000,000, that is about 63 percent of the cost of public education in New Hampshire. If we assume, and I believe that this is a correct assumption, that next year the citizens of this state will spend \$1.5 billion on public education. This is a good bill, Mr. President. It is the only bill so far that has honestly and sincerely addressed the issues of special education. It takes into account, children with economic disadvantages. It produces a basic expenditure cost. It is defensible and understandable by school districts and it takes a broad view of adequacy which is, I believe, in keeping with our responsibilities to our citizens and to the decisions to the court. Thank you.

SENATOR F. KING: Today I guess that I am reminded of what Speaker Tip O'Neil said, "I am against any deal that I am not in on." I hope my comments that I make today do not show that I am against any deal that I am not in on, I am just not happy with this deal. I appreciate all of the work that the committees have done through the summer and since we have been back here in January. As a matter of fact, the work that was done last January through April. I know how much work and I know how heated and intense the discussions have been and I certainly want you

to know that I appreciate that and that my comments that I make are not a criticism of that. I am very disturbed about the very high costs that are attributed to this bill. I haven't seen the breakdown of the monies. It is my understanding that is somewhere in the range of \$965,000,000 costs, which essentially is what we raised in 1999 to raise state government. It is an extraordinary large amount of money. I am also concerned about what appears to be a recognition that much still needs to be learned about the true costs of an adequate education. At best, what we will end up with is a negotiated agreement with the parties to this lawsuit. In a sense, we are going to negotiate a plea bargain. This bill provides for our fourth Senate commission. This is going to strive between now and January 2, 2000 to find the answers. My guess is that we will need a fifth commission and so on and so on. We have 160 school districts in New Hampshire. At least that is the ballpark figure. We have large school districts, we have small school districts, we have rich school districts and we have poor school districts and one deal does not satisfy everybody. One size does not fit everyone. Because of my thoughts about this and as one that has admittedly had a little exposure to discussing such difficult issues, I would suggest that we need to find a way to hear from our citizens before we vote, and I have been doing that as I am sure that you have been doing that too. I have been talking to school administrators, I have been talking to school superintendents and they obviously are in a state of panic out there, there is no doubt about it. What happens after April 1 if we don't do something in the legislature is going to be catastrophic for them and they realize that. It appears to me that we are drifting away from the past objectives that we have had in New Hampshire when it comes to funding education. Matter of fact, I think that we may be in a speedboat heading the wrong way. In the past, the policy was to support those schools, those towns, those cities that really had true economic need, who had low incomes, who had low property value per student, they simply did not have the property tax base to support education and the people who paid the taxes could not afford it. I think that despite the deadline that we face, that we may be jumping into a deal that in the future we are going to say was the wrong thing to do. I don't know how into the future we are going to conclude that. I am sort of reminded of the last major debacle that this legislature faced and that was trying to solve the Public Service lawsuit. That was an interesting lawsuit. Eight or nine years later we are still trying to find a way out of that. I hope that the legislature in eight or nine years from now is not trying to find their way out of this issue. I ran some numbers the other day, or had them run for me, that took \$600,000,000 and put it into the existing Foundation Aid Program and essentially developed a formula for funding education at that rate under the conditions of RSA 198:36 IV. Then I discussed these numbers with some of my school administrators, and I will tell you that the people that I have talked to would think that they died and gone to heaven if they could get that amount of money for their schools. I would like to have this, if I may, passed out to the Senators? I don't expect you to look at these today, but I expect that you probably will look at your town because that is what we all do when we get one of these. That is what I would have done had I got one for SB 49 today. This essentially starts out at \$250,000,000 less than the plan that we have before us and the towns that we thought were distressed in the past, do nearly as well if not more under this formula. It is \$7500 per student is how you arrive at this number in this formula. You plug in a number so it is \$7500 per student under the existing formula and that generates \$600,000,000. I would

suggest that we need to seriously consider adopting a plan that will send out a substantial amount of money to those communities that are in need. We need to make sure that we, through some legal mechanism which lawyers develop all of the time, make sure that money will be available into the future so that we will not be back or they will not be back before the courts, doing what they had to do because Augenblick wasn't funded in the first instance. We need to make sure that doesn't happen. We need to have that money flow to the communities after the state gets it, we can't start spending money that we do not have. I would suggest that this program should be implemented in fiscal 2001, which will start in July 1 of 2000 and that is a school year. We have already funded through the legislation that we passed last year, which doubled the amount of money for schools. In their FY 2000 they will be passing their budgets in these towns before the legislature has decided what they are going to do. They will be locked into that budget year. We need to make sure that the towns know how much money they are going to get so that through the summer and next fall, they can develop a plan to spend it. The bill that we have before us does not speak about education or quality of education or improving education, it obviously assumes what I think is the right thing to do and that is to let the local districts receive this money and let them spend it. But they are going to have a very difficult time to put their plans together. If they are going to reduce class sizes, they are going to need more classrooms. If they are going to offer more programs they are going to have to hire some more teachers. So just gearing up to spend that money...I spoke to someone this morning that is on a school board and they looked at the number for his town and he said, "Our town couldn't spend that much money if we got it, if it is on top of what we are already spending. We could not spend that much money." Senator McCarley, I will tell you in private just who that is. I would suggest that we need to make sure that this amount that we finally agree on can't be reduced until such times as we can set up in the constitution, an educational trust fund which will be K - 12 so that you can't reach in and spend some of that on the University System. That is what we should focus on. We should deal with the University System another way. The towns are going to be almost like the Mega Bucks winner if they were suddenly able to have this money available to them. It is going to be very difficult as I said for them to spend it. I would suggest that any legislation that we send back to the communities, that has this amount of money in it, that at least 50 percent of that money has to go initially to reduce property taxes. Property tax issues are what brought us to this position today. It was not quality of education in the five-plaintiff towns and the other towns that contributed that brought the frustration that they had. It was the payment of that bill that caused us to be where we are today. I think that if you bring a piece of legislation forward, now is the time to tell us that we are going to pay for it. So it is my belief after looking at Senator Below's and Senator Fernald's revenues projections that a 3.5 percent income tax and the money that we already have available from the sweeps would pay this bill, the \$600,000,000. We can also eliminate the interest and dividends tax. Is this constitutional? No. Is the other bill constitutional? No. I don't believe that it is and I believe that there will be someone who will make that an issue in future court cases. I believe that it makes sense and I believe that the plaintiffs' attorneys who represent communities that we will hear, from their communities, that this amount of money is a reasonable amount of money going forward as the commissions continue to do their work. We will have more test scores three, four, five years out,



we will begin to see if this new money that the towns that received has been adequately spent. We will see if there are results. We will see if the towns surely can improve the quality of education if we provide them with the money to do that and then the legislature can address that issue in the future. So, without even seeing the distribution of the money, I can not vote today to spend \$965,000,000 of money that I do not know where it is coming from.

SENATOR TROMBLY: Senator King, I thought that I heard you suggest that the money in this bill was an addition to what the cities and towns are currently receiving and my understanding is that that is not the case. You didn't mean to suggest that did you?

SENATOR F. KING: I only made a statement. I was recounting what I was told this morning. I believe that you are right.

SENATOR TROMBLY: Would you believe, Senator King, that this money is not in addition to...?

SENATOR F. KING: I believe that.

SENATOR DISNARD: Senator King, I heard Doctor Squires indicate that this \$950,000,000 and he didn't say of the total \$1,400,000,000 being spent in public education, but I heard him state that 63 percent of that is covered in this \$950,000,000. I don't understand how the school districts would have a difficulty spending 63 percent of the present costs if they received it.

SENATOR F. KING: I believe that a town that is getting today...I will take the city of Berlin as an example because I just spoke with them at length. Berlin will receive in state aid next year, \$2,523,000 because they effectively doubled that last year. That is my number. I do not know what your number is because I haven't seen the numbers. I haven't seen the chart. My number, if they were to receive \$6.9 million and I would suggest that to spend another \$3-\$4 million is going to be difficult for them to do unless they just spend it on what they are already spending it on, great salaries, greater benefits, I guess that they could do that. But if they are going to have this money they need to develop a plan back home to spend it. It takes time to do that. I am sure that you would agree with that?

SENATOR DISNARD: Would you believe, Senator, that my community is going to be happy as hell to lower part of their property tax with the money that they might be receiving from the state of New Hampshire because they won't be spending that on education, because the state will be assisting them and they certainly wouldn't spend that money and what the state gave them so they are very happy?

SENATOR F. KING: I would believe that if that is what we perceive to do then we should make it clear in the legislation that money will be spent for property tax relief and not just spent on an adequate education.

SENATOR MCCARLEY: Senator King, I was under the impression last night when you came to my office and asked to look at the distribution numbers, which I told you we had finally gotten late in the day and I let you look at, that you had a chance to see what your various communities proposed distributions were; and I am curious as to why you would feel that Berlin, which I guess for 1998-1999 has a budget of \$8.7 million would have trouble figuring out a way to spend the \$6.9 million that is in the distribution? That to me is difficult because certainly we all know that Berlin cannot raise those dollars anymore because of the court



decision. So, I am just curious as to why you think that Berlin might be one of those communities that would have trouble spending less money than they are currently spending?

SENATOR F. KING: What I am suggesting is, Senator, I think what I said was that if communities are going to take these resources and spend them to improve the quality of their education, they are going to have to have a plan to do that and it will take time to implement that plan. They have to have a budget process to go through. If they are just going to spend the money to reduce property taxes that is fine, but conceivably, this money is being raised to improve the quality of education. I hope that this is a quality of education bill. I hope that they are going to spend some money on that and it takes time to do that. If it is just to reduce property taxes then we should just say that it is a property tax relief bill and I probably would support that.

SENATOR HOLLINGWORTH: Senator McCarley, I am confused by this transaction that just went by. Did I hear you say that Claremont or Berlin...

SENATOR MCCARLEY: Berlin because I believe that it is Senator King's district.

SENATOR HOLLINGWORTH: Did I hear you say that Berlin was spending more money than what they are going to be receiving, is that what I understood? Would you repeat exactly how much they are spending now and what they are going to be getting, because from that transaction it sounded like they were going to be getting more money.

SENATOR MCCARLEY: Their 1998-99 budget is \$8,780,000. The distribution and I will add quickly although not part of the question, it has only not been released because I literally got it at 4:30 yesterday afternoon with DOE finally telling me that they were comfortable. So for the record for everyone, that is why you haven't seen it. It is not a matter of hiding anything. Berlin in the district **TAPE CHANGE**

SENATOR HOLLINGWORTH: They are going to get less than what they spend so if they want to spend what they are making now, they would have to raise money at the local level over and above that to fill up that void of what they now currently spend? So they would have to tax their people more money on top of this just to stay level. Is that true?

SENATOR MCCARLEY: That is correct.

SENATOR GORDON: Senator McCarley, I was just wondering if you could distribute the chart, now that it is available, so that we could all view it before we vote on this bill?

SENATOR MCCARLEY: We can certainly do that. Because of the way that it has to be run, it will take a little bit of time to run. It is 28 pages times 24 copies in here. We can certainly do that.

SENATOR BLAISDELL (In the Chair): I will have to take some of the responsibility for not having those figures knowing that the bill was going to go to Finance after we make a decision on what we are going to do here today. I don't believe that those are the firm figures that we are going to be looking at, so I thought that it would be better if we get all of the figures and get it into Finance and then we could get the basic figures down so that there won't be any discrepancies at all. So I will take the responsibility really, because I advised Senator McCarley not to do that until it got down into Finance end of it where we could really get the firm figure. If you would like to do it, Senator McCarley as a request to Senator Gordon, you are welcomed to do it.

SENATOR MCCARLEY: I am certainly happy to. I will add that to some degree, and I am frustrated with the inability to get these numbers. Let me state, but to some degree, I think, there is something actually a little bit straightforward about making your decision for what you want to do about the cost of an adequate education without seeing what your districts get, and we do not know how we are going to raise the dollars, so the reality is the distribution doesn't yet have the revenue side with it. I rise in support of SB 49 the educational adequacy bill that the Senate Education Committee has been working on. I believe that SB 49 is a consensus bill. It incorporates the best elements from three pieces of legislation that came before the committee. Although no group of nine people is going to agree on every particular, SB 49 represents the thoughtful and valuable contributions of the entire Education Committee. We knew that this bill had to make sense on an intuitive level, that we were acting with wisdom and good sense in approaching the issue. It also had to be rational; although, assigning a cost in a distribution formula is not a science, we had to be able to point to data and rationale to back up our work and it had to be defensible. The Supreme Court, as you all know, laid this issue at our door and the committee constructed SB 49 knowing that we would have to confront the issues of constitutionality. In SB 49 we reconfirmed the state's responsibility to provide a level of funding sufficient to ensure that every New Hampshire child is provided the opportunity for a constitutionally adequate education. In this bill, we explain and substantiate the methodology selected by the committee. We began with the curriculum frameworks that were developed as guidelines in the early 1990's with an enormous amount of input from citizens, parents, teachers, educators, you name it, back in the early 90's. Specifically to address the question of what every New Hampshire child should know and be able to do. To measure those student performances, we then did the New Hampshire Educational Improvement and Assessment Tests that were developed. As an outgrowth of the frameworks, the assessment test are valid and rational means of identifying those schools which are educating New Hampshire students at an adequate level or better. Yes, there are other possible criteria that could be used and no, the tests are not clearly objective and scientific, but they did not drop out of the sky, they were developed as a specific measure of how our students are performing and they were developed under the direction of the citizens of this state. I am not going to walk you through the methodology because Senator Squires certainly did that. Senate Bill 49, as amended, responds to the chief concerns that were voiced in public hearings and, during subsequent committee work. Economic disadvantage is factored into the bill distribution formula using free and reduced lunch data. The bill recognizes that educating high school students requires greater resources than elementary students. The bill provides for the state to pay the full nonfederal share of special education costs without the use of the waste that have been brought up as an issue from the federal government. Senate Bill 49 recognizes that the state cannot provide an adequate education to students without providing appropriate buildings, building maintenance, and a way for students to get to school. Under SB 49 transportation costs are funded by the state at 70 percent of the statewide costs. In recognition of the varying circumstances of New Hampshire school districts and as an incentive for districts to be inattentive to their transportation costs. Finally, SB 49 includes one element common to all three adequacy bills. It creates a broad-based commission to look into the issues of the cost of adequacy.

Some have criticized SB 49 because it does not specifically address educational improvement in accountability in a more comprehensive way. But the Claremont bills have to solve specific and time sensitive issues. Educational improvement is an issue that deserves its own form. It is absolute tantamount that we deal with it in a very, very responsible way and there are bills that will be coming before the Senate Education Committee that will take up that very issue. The timing of taking up that very issue after we have some understanding of what we have done for the funding of education, I think, is clearly the appropriate way to address improvement and accountability issues. We have, within the next 41 days, to meet the challenge of the Claremont decision. I believe that SB 49, as amended, is a good step towards meeting that challenge. I urge my colleagues to see sending SB 49 to the Finance Committee. It is not a Democratic or a Republican bill, it is a bill that makes wise choices and arrives at sound and sensible conclusions. I urge your support. Thank you.

SENATOR KRUEGER: I rise in opposition to SB 49. I believe that we are setting the course for the state of New Hampshire down a \$1 billion road that could turn into a \$1.4 - \$1.6 billion road. I also see no addressing the quality of education issues, although I appreciate Senator McCarley's willingness to look at those issues. I think if money is not tied to quality, quality goes down the tubes. I believe that the court looked at us to fix a Ford and I think that we are giving them a Rolls Royce. I think that if you look at a list of figures put out by the National Education Association, percentage of school revenues from local, state and federal forces, you will find, yes, New Hampshire is at the bottom of the pack. If we were to follow this formula as being presented in this bill right now, I am pleased to announce that New Hampshire would only have five states above it, Alaska, Delaware, Hawaii, New Mexico and Washington State. I am surprised that the people of this state can afford such a plan because, let's face it, a billion dollars doesn't come in from Mars, a billion dollars still comes from the pockets of the people in this state. I also see no connection with property tax relief in this bill and am concerned because, after all, people are already paying toward their local schools. With the bill before us, to identify the issue of adequacy, I would refer to an article and testimony that was given by attorney Ed Mosca. I think that his point is well taken. He says, "The state is constitutionally required to fund the entire cost of an adequate education, that is our presumption. That assumption is incorrect. What our Supreme Court actually ruled in Claremont I - was that our constitution "Imposes a duty on the state to provide a constitutionally adequate education." The distinction is not mere semantics because the state's obligation to provide a "constitutionally adequate education" rather than simply an adequate education, the question whether the state is providing sufficient funding for education is a constitutional question not a political question and as such it will be the court, not the legislature, that has the final say in how much education funding the state must provide. It might be \$230 million that is coming off of a Homestead Act or it could be \$2.3 billion. The only thing that we know for sure right now about the cost of a constitutionally adequate education is that nobody knows for sure and no one will know for sure until the court answers this question after April 1. It is therefore, misleading and presumptuous to characterize any act as unconstitutional or a number for adequacy to be absolute." I think that if we are starting at the top of the pile we all need to look at a few things. We need to look at the fact, that let's say, that an average teacher in this state with benefits receives approximately \$50,000.



Let's say that teacher has 25 students in the room, well that is \$2,000 a pupil and the school costs shouldn't be more than one and a half, two, two and a half the price of paying for a teacher. I find that objectionable. I find problems with the weighting problems. I also find that when you receive policy reports such as Doug Hall put out, and you look at adequacy and relationship to parental involvement and parental income etc. etc., then we are definitely into what I call pie-in-the-sky. There is no question that we would all love to feel good. We would all love to give all of this money to the children, or for the children, or however you justify this kind of money, but I don't have any idea how this state can afford this. I also object to the fact that if one looks at economic implications of courting the number that we see before us close to \$1 billion that the economic implications to this state will have an adverse affect on constitutional adequacy or adequacy. Lastly, I would like to say that once we begin and once again when we go down this road, once we cast in stone what legislators believe in this state to be adequate, we will see just what was found in states like New Jersey, where the more money that was thrown into the education pool, the quality of education went down. Thank you, Mr. President.

SENATOR HOLLINGWORTH: Senator Krueger, I would like a clarification, you said that the schools are now spending \$1.5 billion, that's correct that they spent last year?

SENATOR KRUEGER: I would trust that you would know that.

SENATOR HOLLINGWORTH: And you think that this number which the adequacy bill now carries which is 66 percent of the cost of education is too much? Do you think that is more than what the adequacy is? What number do you think should fund an adequate...that is only 66 percent, so you think that the citizens of the state are paying 44 percent more than what is needed for a quality education?

SENATOR KRUEGER: I think that a lot of the money that is put into education in this state as you and I both know, is related to special education costs. I believe that no one is saying that the number that you put out is not a percent of the total, but I find that that number is extremely high when related to not just other states in the country, but if one were to look at the fact that we still maintain that we are the fifth highest, according to some reports, state as far as delivering a quality education and the third lowest tax base. Why would we want to ever make such a drastic change in the complexion of the state that has basically done so well? Obviously I would be much more interested in looking at something that did commit the state to more funding. There is no question that I think that is necessary. I would be more than willing to look at a 33 percent amount of money that went to education, but I also would implore that not only would this legislation or some other legislation coming out of here for funding have quality of education issues attached to it, but also constitutional amendments to make sure that these funding sources remain within this body.

SENATOR HOLLINGWORTH: Did I hear you say that you thought 33 percent is adequate?

SENATOR KRUEGER: Well it just happens to match a number in a plan that I am trying to put forth, so it came immediately to my lips.

SENATOR HOLLINGWORTH: Thank you very much.

SENATOR GORDON: First, I just want to make clear before I speak that I support the Claremont Decision and I support increased funding to the communities for education. The second thing that I want to say as I be-



gin is that I want to compliment Senator McCarley. The reason that I want to compliment Senator McCarley is that within the last few weeks is the very first time...having sat on the Senate Education Committee during my last two terms and also in this term, this is the very first time that the Senate Education Committee has ever had an honest debate over adequacy of education. She led an excellent committee and the debate was excellent. I didn't necessarily agree with the results but it was very well done and I compliment her on the job that she did. I also compliment the committee in addressing the issue of special education and the decision to do away with the current weighting system, which I believe, increases the cost of special education. The decision to include reimbursement of the total costs of special education and making that a state burden, I think is a very wise policy decision and I support that. I think that the committee did an excellent job. I also support the idea of having a continuing commission to look at adequacy because it became very clear, I think, to everyone, that there is no real way that we can convert the word "adequacy" into a dollar and cent amount conveniently. But saying that, I have to take exception to the bill and I will be voting against SB 49 for policy reasons. That is why we are here today, is to talk about it as a matter of policy. I can't agree with it. The reason is...and I really understand the sense of urgency. I sit here and I know what the urgency is and I know that the school people have been calling me and the teachers have been calling me, I know what the urgency is. But I also know, other than the state budget, this is the largest single appropriation in the history of the state that you will be voting on here today. We are talking about nearly a billion dollars. The largest single appropriation. We fight each other all of the time over pennies in other bills and we are here today talking about passing a billion dollars or almost a billion dollars. I think that we should use a little caution. Just to use an analogy, I come from a traditional New Hampshire family. I don't know how many of you come from New Hampshire originally, but I was born in Franklin. I don't often tell people that, but I was born in Franklin and I went to high school in Alexandria. My father was a mill worker and he would come home during the middle of the afternoon and take a nap. I would get home from school in the afternoon and my mother worked in the bank. After the books were balanced she would get home about 5 o'clock or something like that. We would be waiting there, waiting for supper. This is the way that things used to be, as you know. We would be waiting there for supper and the very first thing that we would do, of course, when mother walked in the door was to say, "what time is supper?" So as we had our expectations at the time, she would make dinner. Of course we were always in a hurry because she knew that she had people waiting for dinner. She had this technique that she used and it was called the pressure cooker. She would put the pressure cooker on the stove and put the food into it. I can always remember that I was always scared to death of the thing because the top would rattle and the steam would pour out and I always thought that it was a danger to the whole family. I thought that it was going to explode at any moment. I always wondered at the time whether or not her sense of urgency to please us and our needs outweighed her sense of what was safe for the family in the household. I always thought that maybe she could have used a little more caution. I saw the headlines in the newspaper all of the time in my mind "Family of four dead - state fire marshal said dinner well cooked." But I think that the fact is that even though there is a sense of urgency, I think that we need to use caution in approaching this bill. I will tell you why I fundamentally disagree with it. In order

to pass this bill, you have to agree with one basic thing in the bill and you will find that where it says the whole bill, the whole formula is based upon one thing and that is that school districts that have 40 percent of their students scoring at a basic level or above are providing an adequate education. It says in here that is what the legislature finds. So, if you vote today on this bill, to pass this bill, you are making that finding and you are making an agreement that that is in fact an adequate education in this state. I cannot do that. I was with a bunch of educators last night and they said that some school districts last year were not at 40 percent, they are this year but they probably won't be next year, but we are still going to use those school districts to determine whether it is an adequate education. The fact is that the test scores were never developed for that purpose to begin with. We all know that is in fact the case. It is just not an adequate basis for creating a formula. The second reason that I oppose it is that this formula can be easily manipulated. If you sat on the adequacy commission as I did, you saw that that was in fact the case. That people could use the very same formula to produce two very different results. You also were using the bottom 50 percent of the schools and it seems to me that if we define an adequate education as those schools that are scoring over 40 percent, that we would use all of the schools in that sample and not just the bottom ones, the lowest 50 percent. I just can't agree with that. The issue is that this formula produces a billion dollars. I guess what we may as well do is say that we have decided what an adequate education is, a billion dollars or \$960,000,000 or whatever that number is. I happened to think that Senator Squire's approach in his bill was far more straightforward in just saying that an adequate education is 75 percent of what we are spending. The other thing that I will tell you about this formula, this is the everything else formula. My particular proposal which I have a suspicion where it is going today, but my particular proposal said that let's spend our money on particular things that will improve education. This one says...if you read the way that it is calculated, is the way that we are going to calculate this, is that we are going to take the total cost of education and then we are going to back out capital cost, debt service, special education costs, food service costs, transportation costs and state and federal revenues. That gives you your base amount. Well, what is that base amount made up of? Well, nobody can really tell you. It is everything else, so I call this the everything else formula. What we are paying for here is everything else. Then we are going to add back in a few things. Then we say, well, transportation is critical and it is part of an adequate education, you have to have transportation but you only have to have 70 percent of it. I just don't think that works. If we need transportation, then you need all of the transportation; you don't need 70 percent of it. I am glad that we added in the full cost of special education. I guess to not dwell on this and take too much time, the issue is, this is a great bill if you are like me, you are a politician. This is a great bill if you are in the education industry because it sends out a lot of money to education. But when I go out to the forums that I go out to, when I talk to my constituents, they have different objectives than we do. Their objective isn't just solving the problem. What they tell me is that they don't want another Augenblick formula that can be easily manipulated. They don't want an Augenblick formula that they can't understand. They want something simple that they can understand. If we are going to be spending a billion dollars they want to see some improvement in education. This bill doesn't do anything to improve education. They want to see a reduction in property taxes. How many times have you heard that over

and over and over again? The reason that we want you to spend more money on education is because we want to see our property taxes come down. The way that this distribution is made, it doesn't provide for any reduction in property taxes. This unfortunately, is a **TAPE INAUDIBLE** formula applied to a New Hampshire problem and I don't think that is what we need to do. We ought to apply a New Hampshire solution to a New Hampshire problem. I believe that this is going to inflate the cost of education and instead of doing what our constituents want us to do here. If it takes a little more time to do it, we ought to take the time to do it right. The last thing that I would like to say is that again, getting back to this issue of a billion dollars. Here we are standing and sitting here today talking about spending a billion dollars, \$960,000,000. This bill is going to change the character of New Hampshire life. We ought to know that and we ought to understand that. It is going to change the character of New Hampshire and we ought to take time and do it right. I just don't think that SB 49 is the right thing to do it. Let's develop a New Hampshire formula that works for New Hampshire.

SENATOR JOHNSON: I want to thank my fellow Republican colleagues for their testimony today. I think that they are right on the mark. I guess that if I were not a member of the Senate Education Committee, I would think that SB 49 was drafted by the NEA Dream Team because there is \$960,000,000 in spending. It will not only perhaps pass Dennis Murphy's giggle test which he mentioned in the adequacy commission, but he will be laughing all the way to the bank. After the court decision on Claremont II, I met with many constituents which included several business groups and the consensus was that we had a \$200-\$250,000,000 problem that we were talking about solving with a \$600,000,000 solution through the adequacy commission recommendation and here we are today ready to turn the tax advantage that New Hampshire has enjoyed over the years into a nightmare of a bloated spending plan that has no education accountability and no guarantee of lower property taxes. Thank you, Mr. President.

SENATOR LARSEN: Five years ago I came to a very different Senate. At that time I brought in a bill to the Senate Education Committee to fully fund the Augenblick Formula. That fully funding would have reduced some of the disparities between towns and it would have addressed the requirements of Claremont I. At that time the Senate Education Chairman, some of you were sitting there, severely reprimanded me for having the gall to bring in a bill of this sort and said that the people of this state do not want this. I remember arguing in the Senate Education Committee, that the Senate, as an education committee that we should at least be discussing how we were going to address adequate education funding in this state. If only we did it even incrementally. My arguments failed and the bill was killed on the first day of session. But Claremont II came along and it now requires us to live up to this state responsibility. So it is with real enthusiasm that I stand here today, five years later, being able to honestly state that we had a real Senate Education debate about adequate education funding and how we would define it for the children of this state. We focused on how we could reasonably define the educational needs of New Hampshire's children regardless of where they lived. We worked from the children's needs up, not first deciding what we were willing to spend and backing down from that per pupil spending. We recognize the additional cost of educating at-risk children by adding a weighting factor for free and reduced lunch children. We recognize the importance of revising the special education formula to meet those special needs. We recog-



nize that you can't have an adequate education if you don't have a building or transportation to get to it. We recognized that you couldn't solve it perfectly in this short time, so we created a commission in SB 49 to fine-tune our definitions and formulas for providing an adequate education. Later this session, we will have a bill to address educational improvements and accountability. We didn't want to tangle those issues with the issues of defining adequacy. The Senate Education Committee will have that discussion and it will not be tied with the adequacy definition that you see here today. That did create a stumbling block in past sessions. We agreed to all of these features in a bipartisan way and although some may still disagree with the philosophy, all had the opportunity to be heard and I think that everyone felt that they were heard. Philosophies may differ. We had a majority vote. The Senate Education Committee voted this out by majority vote. We realize that the Finance Committee may need to fine-tune this formula, but unlike those that under fund per pupil costs, SB 49 begins adequate state funding of education. It allows school districts to use state education funds instead of local property tax funds. It substitutes those. It is not a billion additional spending. It is a substitution of the state responsibility for what has been a heavy burden on local property taxpayers. It is for this reason that we will change the character of New Hampshire. We will change it for the better and we will reduce the reliance on property tax and finally bring some relief and good education to the children of the state. Thank you, I urge passage of SB 49.

SENATOR F. KING: Senator Larsen, would you believe that I think that we should have listened to you five years ago? Looking at the numbers today, would you agree that in funding the Augenblick or the Merrillblick Formula at \$600,000,000 would produce a million dollars more for Claremont than the \$965,000,000 that this bill has or the town of Allenstown at \$600,000,000 in the Merrillblick Formula would create **TAPE INAUDIBLE** poor towns \$700,000 more than the \$965,000,000?

SENATOR LARSEN: I would believe that adding \$600,000,000 is not funding an adequate education and it does not distribute the funds in a way that brings adequate education and property tax relief to the kids of this state.

SENATOR KRUEGER: Senator Larsen, I just have one question for you. You pointed out the fact that it would replace or help property tax bills. In fact, you stated that the state will pay the billion dollars, but who is the state and where does the money come from?

SENATOR LARSEN: That **TAPE CHANGE** is not what will bring about equity. It continues to mean that the towns with the lowest property values are often times spending the most to raise the monies that they need to pay for their children. It is substituting a more equitable way, once we find that equitable way, to relieve those towns that are working so hard to educate their children at this point.

SENATOR KRUEGER: Senator Larsen, would you believe that although Claremont's equalized tax rate at \$35.97 is \$15 higher than Hanover's rate, the total tax bill of three homes, two in Claremont and one in Hanover are within a couple hundred dollars of each other so that basically when you talk about property tax you need to talk about valuation and school tax rate and that...

SENATOR LARSEN: You also need to look at per pupil spending in those towns. I think that if you looked at them, that you would probably see that



Hanover has far greater ability to spend on its pupils than Claremont has in the past. I can't do that off the top of my head but I would assume that you need to look at those numbers as well.

SENATOR BROWN: Senator Larsen, you said that this \$965,000,000 is going to substitute for the property tax. I don't see that in the bill. What guarantee do our citizens have that this new tax or whatever it will be, it is yet to be determined, will in fact offset or substitute the property tax?

SENATOR LARSEN: If you are returning 70 percent of the cost of education to towns it is difficult to imagine that the towns would then proceed to spend 170 percent more on their schools. It is logical that local school boards...we all always advocate local control and it is logical that locally elected school board members would do the responsible thing and that is to replace some of the state monies, return those in the form of property tax relief. I know that in my city that has already been committed to happening. There will be in fact, some towns that need to catch up and will use some of that state money to catch up, but most will be under heavy pressure to return that in local property tax relief to their taxpayers. If you do not trust local control, if you do not trust your local school boards then perhaps you want to move some bills that return total control to the state.

SENATOR D'ALLESANDRO: I will certainly be brief. I rise in support of SB 49. I want to state for the record that A) I am a politician and I am very proud of the fact that I am politician. I was elected to serve the constituency. I am very proud of that. I came here in 1973 as a member of the state legislature and I served on the Education Committee and we talked about many of the things in 1973 that we are talking about right now, so history does repeat itself, I want to make that point clear. B) I am an educator and I am damn proud of that. I have spent 37 years of my life in education as a teacher, coach and a college administrator. I believe strongly that education makes the difference. It made the difference in my life and it is going to make the difference in the lives of every one of these people seated in the gallery. Education is going to make the difference and you will make the difference in the lives of people of the state of New Hampshire. I was a teacher and I was a coach. My mother worked in a candy factory. My mother had to leave school in the eighth grade to support her family. The one thing that my mother brought home was the fact that her children would be educated. My dad graduated from East Boston High School, Class of 1929, the proudest day of his life. He could not further his education because he had to support a family. His father passed away and left six children and a woman, my grandmother, who was pregnant with her seventh child. Those are things that I am very proud of. I am proud to say that we had an excellent debate with regard to SB 49. It was a bipartisan debate where the best of each one of the issues was brought together. That is what politics is all about, seeking the best solution at the time. Is anything permanent? Absolutely not. We all have seen pencils, they put erasers on pencils because of the fact that we do have to make changes. The broad nature of the commission that is authorized in SB 49 does that. I compliment Senator Squires because of the breadth of that commission. Life is a series of problem solving exercises. We are solving problems from the day we are born until the day we die. That is what life is all about and I hope that never changes. Nothing remains static. The data wasn't complete. We know that. But the data used was the best that we had at the time and again, changes will be made as we move forward, but with a meaningful debate, with a bipartisan solution and with the ability to do better. To do better for whom? To do better

for the people that we represent. I am a member of the local school board in Manchester. Our schools provided the greatest portion of the sample. We have 17,000 students in our system. The elementary level has 10,000 and the secondary level 7,000. I have a responsibility to my community and I take that very seriously. As we move forward, let's focus on doing the right thing and what is best for the state of New Hampshire because that is what we are here for. I believe that SB 49 goes a long way to doing that. As I said, we strive for perfection. If anyone in this room could be perfect they wouldn't be here, but we are here and we are here to make a difference. A positive vote for SB 49 begins the path of making a difference. Thank you very much.

SENATOR HOLLINGWORTH: I hadn't planned to speak but having sat in on the Education Committee and the putting together of this bill, most of the time when they were discussing adequacy and then hearing the debate this morning, I felt that I had to. I felt that some how either I didn't hear things right so I would like to get that on the record. I heard Senator Gordon say that it was the, "bottom schools" only were going to be tested, and that is not at all what I heard in the hearing and that is not at all what I believe the formula has in it. I also heard Senator Gordon say that he thought Senator Squires, position on 75 percent was the way to go. I know that I heard the attorney general say that you can't use 75 percent because it can't possibly have been used because you have to have rational and reasoning, otherwise it would be found unconstitutional. So I don't understand how he could stand here before you today and say that he would support that after... I am sure that he was in the room when that discussion was taking place. He also went on to say that he supported education and he supported the court's ruling and he supported funding an adequate education. Now, his bill that he had in, I am not sure, but I think that it was around \$700,000,000 or \$800,000,000 and he knows that what went into his didn't have the data and he admitted that in the hearing that it didn't have that information. He knows well that the commission is set up to gather the information because the committee didn't have it and that it is an ongoing process that there will be changes in what will happen as it is in the McCarley/Squires/D'Allesandro adequacy bill. So I guess what I am saying to you today is, that I had hoped that this wouldn't be political. I am one of those naive people that when everybody else says that it isn't going to happen, I truly believed when I walked into this room today that we were going to try and come together and would make amendments knowing that there are some changes that should be made and that we would be standing mostly on party lines. Thank God that we have at least one Republican who has decided that this was not going to be a political issue. I have gone to each of you and said "put in information, I want to hear from you, let's bring this together, we have to resolve this." I am standing here today and we have one proposal of adequacy at 33 percent and somebody else at 75 percent. Our number is lower. That is what I am hearing today. One billion keeps being thrown out there when they full well know that the problems that we have to discuss is that there is \$1, 005,000,000 that is what the level of funding is today. At 66 percent, if you think that there is that much waste, then tell us where because we would like to know, I would like to know. If you truly think that there is a better way to do it... Senator Squires said, okay, let's just pay for teachers and material. We don't have that information, plus that takes away local control from the schools to be determined how much they want to pay their teachers and those kind of things that they should determine. Personally, I have faith in my communities, which is something that I

thought that all of us had, that if they had money, that they would use it wisely. I have no idea why you would think that the school boards and the selectmen and the voters of the district, that we are all sent here to represent aren't going to take and be as conscientious about every dime that is spent and make sure that it goes back to the taxpayers of this state. I am sorry, folks, but I am really angry that what I sat through and listened...and I didn't by the way see too many other Senators in that room listening to the debates and discussions that went on. I was proud of the discussions and debates that went on. This bill is coming down to Finance and I want to see every one of you that stood up here today in opposition of this bill, and to come in with a proposal. I await you. Thank you.

SENATOR FERNALD: I want to start off by saying two things. The state has an obligation to fund the cost of an adequate education and the people of this state treasure and cherish local control of education. Now those might sound like obvious things, but what has troubled me in some of the comments that I have heard today, is that it sounds like we have people in this room who don't understand those two essential points. Senator Johnson said that we have a \$200 million problem. I don't know anybody who thinks that we can do adequate education for \$200 million. That is not the magnitude of our problem. Senator Krueger, quoted some lawyer who was quoting Claremont I, says that we don't have an obligation to fund adequate education. I would invite Senator Krueger and that attorney to read the Claremont II decision which followed Claremont I and clearly states "that the state's obligation to fund the costs of an adequate education." Senator Krueger says that this is a bad number because it takes us to sixth in state aid to education as a percentage. Her obligation is to fund adequacy and where that leaves us in the standings is where it leaves us in the standings. The Supreme Court is not going to care whether it puts us at fifth or twenty-fifth, it wants to know that we funded adequacy. I have heard some other statements, turning away from the subject of adequacy. I have heard Senator Brown say, "Where is the guarantee of property tax relief?" I have heard Senator Fred King say, "Do we get property tax relief or are we going to spend all of this money and how do we spend it, where is the plan?" and so on and so forth. Local control, don't forget local control. We return this money to the school districts and we believe in the wisdom of our local people, our school district voters and our school boards to decide what to do with this money. We already know that the money that we are returning to them is less than what they are spending now. So when Senator Brown says, "We can't afford a billion dollars" we are already spending \$1.4 billion. So, yes, we can afford it because it is what we are already spending and it is up to local control to decide how much of this goes to property tax relief and how much of this goes to improvement in the quality of education. In one school district it may be all property tax relief and in another school district there may be significant increases, depending on the needs of the people in that town. Let's keep these basic principles in mind when we discuss this issue because we have just five and a half weeks to resolve it. Speaking to the bill ever so briefly, it is an attempt to define adequacy, to respond to the Supreme Court's mandate. I think that it is a good effort. There are no bright lines in this debate. We can come up with many different scenarios of how to define adequacy and we can pick away at our methodologies, but I think that this is a good approach. I think that it is a good number that is defensible before the Supreme Court. We do not want to go through another round of litigation. I would urge us all to support this bill. Thank you.



SENATOR JOHNSON: I just wanted to correct a statement that Senator Fernald made that I said that there was a \$200 to \$250 million problem. What I said was, that several business groups made the consensus that we had a \$200 to \$250 million problem. That was not my direct quote.

SENATOR FERNALD: I hope that you set them straight because everybody in this state needs to understand where we are?

SENATOR FRANCOEUR: Senator Fernald, do you believe that this is going to end the litigation in the state of New Hampshire or is this only going to end round one and round two will be coming right behind it?

SENATOR FERNALD: I think that this is a defensible definition of adequacy and it is a defensible number. I think that the plaintiffs would be ill advised to challenge it. I believe that the Supreme Court was a reluctant court. It took them four-years to get to this point. They said that it was our job to define adequacy. If we do a good job of defining adequacy, they are going to say 'we have to leave some discretion to the legislature and we are not going to second guess them down to the penny' and that they will support this number.

SENATOR BROWN: Since I am being quoted I wanted to make sure that you understood my position on the \$200 million or whatever million problem that we have. Are you aware that that is approximately the amount of tax effort differential we have between the communities to pay for those billion dollars or \$1.2 billion in the cost of education? That is number one. Number two...

SENATOR FERNALD: May I respond to that question if it was a question?

SENATOR BROWN: Sure.

SENATOR FERNALD: I am not sure how you can calculate the differential from the communities until we identify the revenue source and I would also say that in the state communities do not pay taxes, people do.

SENATOR BROWN: I would say that the answer to that is that we know what the communities are paying. We just had this 66 percent or the 75 percent or whatever you come up with, is your magic number for adequacy. So we already know what the communities are paying. The difference is in the calculation between the tax rate, the assessment and the total tax base is being used to pay for the cost per student in each community and that is where that differential comes from, from that calculation. That was number one. Number two is, when you talk about trusting the local people, and I talk about property tax relief, that is exactly what I am saying. It is the local people who decided how much to spend. It is those people who are spending too much in some communities from their ability to pay. If we provide property tax relief, we then trust those local people to decide how much they want to spend rather than hoping the bureaucracy that gets the money might give some of it back. So there are two ways of looking at whether you trust local communities. Would you agree with that?

SENATOR FERNALD: No. Actually, I didn't even understand it. I think that we are returning the money to the people and they decide what to do with it. We do not mandate that this is property tax relief. We say that this is funding for education. You can use it and spend more and you can use it to reduce your property taxes or you can do some of each.

SENATOR BROWN: Is it not the local taxpayers who decide how much to spend?



SENATOR FERNALD: Exactly my point.

SENATOR BROWN: And therefore, their money that we should be reimbursing and substituting.

SENATOR FERNALD: Exactly my point.

SENATOR BROWN: Thank you.

SENATOR HOLLINGWORTH: Senator Fernald, since you are a lawyer I would like to ask you a question. Can't you put the problem...of what it is...is that the state said that you have to tax fairly? So this whole issue about there is only \$12 million...like these businesses out there are saying or there is \$200 million, isn't it just simply that the state is going to have the responsibility and to tax, which would say that education is its responsibility and that they are going to have to tax it? That they have to tax it proportionally. It is like the rooms and meals tax. If you buy a dinner in Manchester you are going to pay 8 percent on that meal. If you buy a dinner in Claremont you are still going to pay 8 percent on that meal. Is that the simple idea that the tax base, if you are going to use property taxes or if the state is going to tax, it has to be proportionate and reasonable?

SENATOR FERNALD: That was the court's conclusion that where the state has an obligation to fund adequacy. We are currently funding that with local property taxes of varying rates, which is unconstitutional. If we are going to use property tax to fund adequacy it has to be uniform statewide.

SENATOR HOLLINGWORTH: Thank you.

SENATOR COHEN: We have to remember here and keep in mind the committee that brought us this bill. This was not the Ways and Means Committee, this was not the Senate Finance Committee, this was the Education Committee. Education policy is what we are talking about here. Senator Gordon suggested that we need caution. This bill was done and handled with great caution here. Make no mistake about it. We didn't come in here and say 'let's spend \$965,000,000 and then let's figure out how to get there' that was not the way that it worked. This was an education policy committee. We looked at the needs. We have a mandate, a requirement. We are coming up against a deadline really quickly. We have a requirement to find out and to define the cost of an adequate education. That is what we have done with great caution and great deliberation. The result of the committee's deliberations has been driven by need. We were not driven by some arbitrary figure, some politically motivated cost figure. We were driven by need. Throughout the entire deliberations we looked at how can we really define the cost of an adequate education? What are the basic needs that we are talking about here? Your basic needs? Senator Krueger referred, suggested, that we have a Rolls Royce when what we need is a Ford. Now I think that I know New Hampshire pretty well. I haven't seen a lot of school districts that I would consider Rolls Royce school districts. What they are spending now is about \$1.4 to \$1.5 billion. That is what they are spending now. Sixty-three percent of that...I just can't imagine how you can call that Rolls Royce spending. Sixty-three percent of what the towns, these conservative towns, are spending now. That is not Rolls Royce. We are talking about a relatively reliable vehicle to get us simply from point A to point B, never mind even a radio in the car. If the towns want to spend more than a bare minimum on an adequate education, then the towns can do that. This doesn't restrict them, but again,

this didn't come out of Ways and Means, this did not come out of Finance. We are talking about education policy here. Senator Gordon talked about changing the character of New Hampshire. We are doing this to keep what we value about the character of New Hampshire. We are just trying to improve our system of funding for education, to make it fairer, to enable some property tax relief. We are trying to preserve the character and do what the Supreme Court has...the opportunity that they have given us to address these issues which, as Senator D'Allesandro mentioned, we have ducked for years and years and years. We are trying to address that now. This is a very well crafted bill. It is going to go to Finance, as we all know. Let's consider that this is need-driven. This is anything but a Rolls Royce bill. This is something that addresses the needs that we have cast aside for too long. This is a very important bill. I urge my colleagues to pass SB 49.

SENATOR BELOW: I rise in support of the pending motion. This is an important step in the process of our fulfilling our constitutional duty to provide, to fund with proportional and reasonable state taxes, the full cost of a constitutionally adequate education, which in its essence is a degree of education which is sufficient to preserve and perpetuate our free government and economic prosperity. I think the methodology used here puts us in the right ballpark. It is not perfect, we know that. It needs more work. It is going to have that opportunity in the Senate Finance Committee, but it puts us in the ballpark. I think that we don't know exactly what the local school districts will approve for budgets for the next school year, but we are in fact budgeting for fiscal year or school year 2000 and 2001. A reasonable estimation based on recent history would be that districts will vote to spend on the order of \$1.5 billion for K - 12 education in this state in the next school year. That is the wisdom of the local voters through the local school budget process. That is about \$7,500 per pupil. This bill proposes to fund close to \$5000 per pupil. That is on the order of 63 percent or two thirds of the total cost of education. Some have suggested that we could provide an adequate education for \$600 or \$700 million. That is less than half of what can be reasonably expected to be spent in the next year. To suggest that we could cut school spending in half across the state, across the board, and still do an adequate job for the youth of this state in providing them with the skills to participate in democracy and to participate in the economy and support themselves, I just do not think is plausible or defies common sense. My final comment. I would just like to make a couple of observations. There was a reference in The National Education Associations statistics. I have a book here The Ranking of the States 1997, which is the latest data in the research division, which is generally regarded as the best available data on school spending. When you look at the percent of the spending revenue for K - 12 education from state governments for the two most recent years available, we actually find that there are about a dozen states that are contributing 63 percent or more of the costs of K - 12 education. These include Hawaii, Washington, Michigan, Delaware, Kentucky, Arkansas, New Mexico, Alabama, North Carolina, Idaho, Alaska, Utah, West Virginia and Oklahoma. To suggest that contributing 63 percent of the costs through K - 12 education put us way out in front of other states is simply not true. It just puts us in the ballpark with the states that are leading on this issue. We have also heard that we are spending maybe too much in New Hampshire even though it is what the local voters choose to spend, but again, just for the record, I would like to point out that for the last two years for which we have data

available, when we look at total current expenditures for K - 12 education per pupil, school years 1996 and 1997, we were respectively 1 percent below the national average and 2 percent above the national average. So there again, our total spending per pupil is just about at the national average. I think that in conclusion, it is an important step to move on and we have 41 days to continue our work. Thank you, Mr. President.

SENATOR FRANCOEUR: Senator Below, I know that you are using K - 12, but are you aware that there are towns in the state of New Hampshire that do not have kindergarten in place so that might be skewing your number somewhat for the state of New Hampshire?

SENATOR BELOW: I am aware that some districts don't have kindergarten. This is what was actually spent, so it excludes where there isn't kindergarten and there was no expenditure and there is no pupil to divide by. So it just reflects where kindergarten spending occurred, the average expenditure.

SENATOR BROWN: Senator Below, is it fair to say that this is creating a \$965,000,000 new tax liability for the state of New Hampshire without necessarily any guarantees that it offsets or substitutes existing taxes?

SENATOR BELOW: Well, what we do know is that as of April 1, the current property tax system for funding education is unconstitutional and unenforceable, so there is no local revenue base for funding K - 12. So, yes, what the court has said, and I accept, is a duty of my office is that we have the obligation to fund that with fair proportional and reasonable state taxes.

SENATOR BROWN: I appreciate that and I think that there has been a great deal of effort to define adequacy, which I appreciate, but my question is do we have an additional tax liability of \$965,000,000 with no guarantee that the local property taxes are going to go down? A guarantee?

SENATOR BELOW: Well we have a guarantee that there are no school taxes as of April 1. Absent action by this legislative body to provide some other revenue so we have a guarantee of 100 percent drop in school taxes as of April 1. I think that we have to finish putting the pieces together, the other part of this is the revenue plan and yes, I think that needs to be structured so that what we appropriate and spend for an adequate education is in fact a credit against the budget, it is a revenue against the budget that is used to directly reduce property taxes absent the voters to increase their budget.

SENATOR BROWN: Isn't it accurate to say that the court ruling said that the state portion of the education tax is what will become unconstitutional, there will still be local school taxes on your property tax bill, is that not correct?

SENATOR BELOW: Only if we legislatively provide that. It doesn't exist as of April 1.

SENATOR BROWN: I think that you need to go back and read the court room ruling. Thank you.

SENATOR FERNALD: Senator Brown, my question is this: Do you think that we should be mandating that the new state funding for adequate education must result in property tax relief in negating local control or should we allow the local people to decide what to do with it?

SENATOR BROWN: I am suggesting that if you provide that the state pays for **TAPE CHANGE** it should offset what we are already spending. I agree with everybody who is saying that we are already spending



on local education taxes to pay for adequacy. Whatever we come up with, \$900,000,000 or \$200,000,000, whatever that number is, it needs to offset the costs that we are already spending, then the local taxpayers decide, do they want to put more money into it. I am concerned that by putting this money out there that we are not going to have it washout so that we really aren't helping the local communities with the disparities that they have.

SENATOR FERNALD: So you don't think that the local voters are smart enough to figure this out if we give them the money, what to do with it?

SENATOR BROWN: I think that they are very smart to figure it out if they see their property taxes go down and they go to their school budget meetings as they do right now and the school board members present their budgets to them and they vote for it. I think it has to go through property tax relief. That is why I asked the question, is it more spending or is it property tax relief? You can't spend those dollars twice, which is it?

SENATOR FERNALD: So if a school district wants to take...and they get a million dollars from the state that they have never gotten before and they said that they want to put \$100,000 into two new teachers, they can't do that, that is what you would say?

SENATOR BROWN: I am not saying that at all. I am saying that they can do that with the permission of the taxpayer. That we need to maintain our current system of making that decision through the local taxpayers by it being their tax liability. That is what I am saying.

SENATOR FERNALD: Do you see anything in anything that we have discussed that would limit the rights of local people to decide how much to spend?

SENATOR BROWN: Let me say it this way, in every state that has gone down this road and put in new taxes to help offset the cost of education has not resulted in long-term property tax relief. That is my concern.

SENATOR FERNALD: Have you looked at Michigan?

SENATOR BROWN: Yes.

SENATOR GORDON: Senator Hollingworth, you made some representations in your rather animated speech and one of them was that I believe that it had to do with whether or not Senator Squires' plan was defensible...the attorney general indicated. I guess that I would like to know, having been to all of the hearings and fully in attendance that I believe that I heard the attorney general say that any of the three plans that were presented had a reasonable rationale and were defensible?

SENATOR HOLLINGWORTH: That is not what I heard. In fact, what I heard the attorney general's office say is that to take a percentage you had to have a rationale for taking that percentage and that you couldn't just use a percentage and say okay, we will pay 75 and the locals will pay 75. You had to have a rationale and a reason for establishing that and if you could prove that rationale and reasoning...and you would have to take certain things out. You would have to say that education is this much and we are only going to provide 75 percent because we think that this 25 percent is adult education or this is the wall in Nashua or this is the other thing, but you would have to establish if you were going to use that rationale of any percentage, you would have to establish that the reason taking it out, that there was a rationale that could be justifiable and that the bill, as it stood, did not offer that rationale of rational-less and therefore it would be unconstitutional.

SENATOR GORDON: I just want to make sure that your testimony here today on the Senate floor is that they indicated that Senator Squires' plan wasn't defensible?

SENATOR HOLLINGWORTH: Unless that...it was not defensible unless you establish how and what you were taking out of the bill. That you could not use a 75 percent of a 25 percent without determining what went into that percentage and how you came to those numbers.

SENATOR GORDON: Well then, in this bill where it takes out 30 percent of the cost of transportation, is there any rationale in this bill for doing that?

SENATOR HOLLINGWORTH: Yes, I believe that there is. I believe that the testimony that I heard was that they said that transportation, much of the transportation was that they transported students to ball games and it was not part of the education...of the adequate education and they used transportation to take them to visit the State House and it may not be considered a part of education. Certainly there were rationales and reasoning that you could say that transportation...plus, I think that the commission is assigned to determine later on, just as they are to go on determining whether that percentage that they use should be established and kept in there. So it is kind of left as a question as to what that adequacy is and it is a ongoing debate as to how you will count transportation. And as I believe that I heard them say, that there might be a situation where transportation would be...there would be a certain amount in transportation and that the communities could draw more from that transportation pool if that was so decided later on.

SENATOR GORDON: You also indicated in your prior testimony that you weren't taking 50 percent of the available schools but all of the schools over 40 percent, is that correct?

SENATOR HOLLINGWORTH: No I didn't say that. I said that I heard you say that they only took the bottom schools in your testimony.

SENATOR GORDON: The bottom half, that is right.

SENATOR HOLLINGWORTH: The bottom half. I understood when I was there that they were taking more than just the bottom half, that they were taking some of the schools above that as well.

SENATOR GORDON: If I could refer you to the bill or at least to the amendment, it indicates that it is taking the bottom 50 percent of the pupils in the state.

SENATOR HOLLINGWORTH: Aren't they also taking those in the middle and above as well so that it makes a middle ground rather than just when you stated it, you stated it as just the bottom.

SENATOR GORDON: I am sorry, Mr. President, I don't mean to dwell on this but when it says that we are taking the bottom 50 percent, how does that get to be the upper half?

SENATOR HOLLINGWORTH: Because in your testimony you said that they only took the bottom and I understood in the hearing, and what I understood to be in this bill, is that they also took the higher end as well as the bottom, that they didn't just take the bottom, and what you said is that they "just took the bottom." At least in your statement that is what I understood you to say.

SENATOR GORDON: I guess that I would like to know, Mr. President, if there is something different in the bill other than "they took the bottom?"

SENATOR BLAISDELL: Senator McCarley, would you like to answer that?

SENATOR MCCARLEY: As I believe that Senator Gordon understands, we made a fundamental decision that we would include in the districts, and they are not a sample, we set a criteria, children that are at least 40 percent of the kids in each school that are scoring at the basic level or above. So we included our most high performing districts, some of which are some of our highest costs districts, but we included everybody that met that criteria. We then looked at those districts where at least 50 percent of the kids were being educated that were spending less money as opposed to the more money. So in that sense, you do end up with the districts that were more efficient. As to the suggestion that I think Senator Hollingworth heard about Senator Gordon's statement, I don't really want to get in the middle of their statements, but I think that Senator Gordon did imply that we took 50 percent of our lowest spending districts in the state. That is not accurate. I think that is the clarification point here.

SENATOR GORDON: This is a would you believe? Senator McCarley, I am even more convinced that you did an excellent job in the Education Committee because not one single time in the Education Committee did I hear one single person's name identified and there was no personal discussion. It was all discussion about issues and about bills and I was very impressed with that. I feel that the discussion in the committee was much better than the discussion that we had today on the floor of the Senate.

SENATOR F. KING: Senator Hollingworth, I think that it is an appropriate time to raise this issue. Would you believe, Senator Hollingworth, that reasonable people might be able to disagree on this bill on the basis of the amount of money that is being spent regardless of political affiliation, that this is not a partisan issue, that this is an issue of each of us making our own thoughts known based on what we believe is right and what is wrong and what is best for our constituents and that it is not a partisan issue? Would you believe that?

SENATOR HOLLINGWORTH: I would believe that. Certainly, Senator King, as you know how strongly I feel about this issue coming out of here that it is a bipartisan and that we worked together. But when I heard Senator Johnson stand up and thank his Republican Senators. That is what brought me to my feet. He thanked his Republican senators for taking the position that they were taking today. That is clearly why I responded in the way that I did because I thought that he raised the issue that it was going to be a lower number. That is how he started his statement and he was proud of them for having that position. I am sorry, Senator King, if you take exceptions to my feeling on that, but I have to tell you that I thought that if you were unhappy with Senator McCarley's bill that you would have appeared at the hearing and perhaps said that I think that I would like to have this or that formula in or this or that number in. I didn't happen to see that so I have to say that when we come to the floor and it is a debate on the issue on the floor, it doesn't show that there is this coming together or a discussion that is going on or a willingness to bend and change.

SENATOR F. KING: Are you surprised, Senator Hollingworth, that I have a problem with that amount of money? Have you been at meetings where I have expressed what I think the proper amount of money needs to be? So I have been present at hearings, is that true?



SENATOR HOLLINGWORTH: Senator, I am not saying that it is just the money issue, it is the debate that we were having. That there was no input. That is what I am saying, that there was no input until we got on the floor here. What bothers me is that if we are trying to build this together as something that this Senate is going to send out of here as Democrats and Republicans, that it doesn't come to the floor in front of the Channel Nine television camera or the press. That the debate should be taking place in the hearing room and the discussions as they are going on. It shouldn't be taking place here. We should be discussing it openly during the public hearings where there is a chance for the committee to change it if there is some willing...if there is some issue that people don't like.

SENATOR JOHNSON: I just want to correct a statement made by Senator Hollingworth. I did not specifically say that "I supported their position" I said that I thanked them for their testimony. I did not mention anything about what their position was on the bill. Thank you.

**Senator Trombly moved the question.**

**Adopted.**

**Question is on the committee amendment.**

**A roll call was requested by Senator Johnson.**

**Seconded by Senator Francoeur.**

**The following Senators voted Yes: Fraser, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Squires, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler, Hollingworth, Cohen.**

**The following Senators voted No: F. King, Gordon, Johnson, Roberge, Francoeur, Krueger, Brown.**

**Yeas: 16 - Nays: 7**

**Amendment adopted.**

**Referred to the Finance Committee (Rule #24).**

**SB 50**, relative to the state's responsibility to provide an adequate education. Education Committee. Vote 7-2. Inexpedient to legislate, Senator McCarley for the committee.

SENATOR MCCARLEY: Senate Bill 50 calls for a particular division and responsibility for funding educational costs. Under the provisions of SB 50, the state would fund the full costs of instructional services and then the schools and local school districts would pay for the operational costs. Senate Bill 50 presents an approach to dividing the educational funding responsibility between the state and the school districts which uses an alternative methodology which focuses on educational inputs including such specific elements as teacher's salaries, classroom materials and staff development funding. The methodology of SB 50 is appealing and its appearance is simplicity; however, I think that we all realized over the course of our work sessions that a simple solution will not get us where we need to go. There were concerns that SB 50 would not meet adequacy requirements and further concerns about determining and justifying its structural cost versus operational costs. In itself, funding educational adequacy is a complex problem. Add to that that we need to craft a bill that meets constitutional requirements and you find a problem that SB 50 cannot solve. In another set of circumstances, perhaps in a past time even, SB 50 may have been an appropriate legislative vehicle for delineating school funding responsibilities, under the circumstances of the Claremont ruling, with the plaintiffs in the court watching us closely,

we need a bill that is defensible in addition to being sound. The discussions surrounding SB 50 were important and you heard during my statements earlier that we incorporated elements of all three proposals into our final version. The prime sponsor on SB 50, Senator Gordon is to be commended for the contribution of SB 50 to the adequacy debate; however, the committees vote on SB 50 reflects our belief that it is not a solution to the challenge set out through the Claremont ruling. The Education Committee voted SB 50 inexpedient to legislate.

Senator Gordon moved to have **SB 50**, relative to the state's responsibility to provide an adequate education, laid on the table.

**A roll call was requested by Senator Hollingworth.**

**Seconded by Senator Cohen.**

**Senators Cohen and Hollingworth withdrew their motions.**

**Adopted.**

### **LAID ON THE TABLE**

**SB 50**, relative to the state's responsibility to provide an adequate education.

**SB 74**, relative to the rulemaking authority of the real estate commission concerning practice relating to certain dwellings. Executive Departments and Administration Committee. Vote 7-0. Ought to pass, Senator Francoeur for the committee.

**SENATOR FRANCOEUR:** This bill allows the Real Estate Commission to adopt rules relative to one to four family properties and other commercial properties. Currently the commission can only propose and adopt rules for all properties even though residential or one to four family units are considerably different than commercial properties. Any rulemaking that the commission would propose still must be approved by the Joint Legislative Committee on Administrative Rules. The committee recommends this bill ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 82**, relative to the termination of employees. Executive Departments and Administration Committee. Vote 5-2. Ought to pass, Senator Trombly for the committee.

**SENATOR TROMBLY:** I think that the logic and rationale and the reason for this legislation is obvious simply by just reading the title. Let me tell you some of the opposition to the bill and why the majority of the committee believes that the opposition to the legislation was not sufficient to require its passage. Clearly, this is a bill where ignorance is not bliss. In short of perhaps a divorce for those people in the state who are allowed to marry, and death, being terminated from a job is one of the three most traumatic things that can happen to an individual. The simple fact of this bill is that if it is enacted, if an employee seeks to have the reason stated in writing from their former employer, then the former employer must put the reason in writing. It requires no writing that the employer do so voluntarily, it requires an affirmative action of the employee. The stated purpose for the bill clearly is in many instances when someone is terminated from a job and seeks to be reemployed, if the subsequent employer says to the former employee, why were you fired? And the response is, "I don't know" then we thought that it may create

a condition where the prospective new employer might believe that the former employee was hiding something or didn't want to confess up to something and that might jeopardize their ability to obtain the new job. There was one organization that spoke against the bill and the Commissioner of Labor spoke in favor of the bill. The reason stated to oppose the bill was perhaps that it would change the status of employees in the state. As you know, New Hampshire is an at-will state, meaning that an employer can fire you for any reason unless, of course, you are a member of the protected classes in the civil rights statute. This bill does not do that. We will still be an at-will state. An employer will be able to fire an unprotected employee for whatever reason whatsoever. It does not negate personnel policies so it doesn't override the policies already set by an employer. It doesn't unduly create paperwork or burdensome procedures for employee in that currently, if someone is terminated by an employer, if they seek unemployment compensation and the employer disputes the granting of unemployment benefits then the employer has to report to employment security already, the reason for the termination. So if they can do it now in some instances it certainly seems quite likely that they can do it in other instances. The problem with employment security, so I can head off that argument there is that unless the employee is denied the benefits or even in the first instance, they need to apply for the benefit. If any employee doesn't apply for the benefit, it wouldn't know why they were terminated. If they do apply for the benefit, unless the employer contests the granting of the benefits, they would never know why they were terminated. Some had a fear that the age-old problem that when you don't like something and you are threatened that the lawyers are coming in and sue employers. That is just an argument that holds absolutely no merit because it being an at-will state for termination, even though you give someone a reason whether or not the employee likes it or not, that does not create a new grounds for suing the employer. So this bill does not create any liability in the terms of labor relation in favor of an employee. Mr. President, clearly this bill is about fairness. It is a bill for the workers of this state. It is a bill that is a long time in coming and the majority of the committee request that you vote ought to pass.

SENATOR FRANCOEUR: I also sat on the Executive Departments and Administration Committee that heard this bill and I have heard it a couple of other times. It has been in the legislature now for quite a few years that I have been here and probably a lot longer knowing how long some of the other Senators have been here. I think that this is nothing more than a piece of feel-good legislation. It will do nothing for the employees because if the employers want to they just have to create a form letter and check off the box, this is why you got terminated and it does nothing but put more burden on already small businesses that are struggling to just create positions for people to work and be in an environment that they can be competitive. The more that you tie down...and you have to remember that over 80 percent of New Hampshire are small business people and that is under five individuals in a company. The more burdens that we put on them, I think, the more that it is going to hurt the small businessperson. Not that I don't believe that it is not going to create litigation, I also think that you would see fines coming from this later on down the road from the Labor Department if it is not produced in a timely manner or on the right report that they so choose. I would ask the Senate members if they would stand with me in opposing this legislation.



SENATOR BROWN: Senator Trombly, isn't it true that in this bill that there are not any timeframes? In other words, if you are terminated by an employer, there is nothing in here that says that it must be done within a week or a month or five years...that you have this option of asking for the written request. So what is the rule on that defense?

SENATOR TROMBLY: It is when the employee makes the request you give them the reason. If an employer has kept the records that an employer should keep, then they will go back and say we hired you for the following reason.

SENATOR BROWN: Well even the IRS has timeframes. Is that three-years, five-years or?

SENATOR TROMBLY: I would never presume to follow what the IRS does as a standard of good taste or good policy.

SENATOR BROWN: I am sure because you mentioned that you deal with this in your business as a lawyer, I am not sure?

SENATOR TROMBLY: Well I would also deal with this legislation as a small employer. I have five employees under me and some of them could be regulated by this and I see absolutely no burden added to me as a small employer.

SENATOR BROWN: Would you believe that in my experience in 23 years as a private public accountant working with small businesses right here in this state, that I have seen a number of companies who would have been very concerned about this for a couple of reasons? We have an employment at-will state, but it doesn't just apply to employers, employees can come and go as they choose and employers can let them come and go as they choose, but there are occasions when it is in the best interest of the employee, if the employer doesn't say anything about the reason for termination. There is a fear...I would like to think that lawyers wouldn't take the cases, but there is a few that if the put in writing that I had to let an employee go for a reason that isn't very nice, the employee was doing something that they didn't like, that they may be debated or sued or whatever on that.

SENATOR TROMBLY: To answer the first part of your question in terms of employees having the ability to move freely to conduct a job. We ended that kind of thing in the 1800's. I certainly hope that we don't require that the employees be bonded to their employer for any period of time for whatever reason. I think that is a very good policy that I hope that we wouldn't overturn. But as to the second part of your question. This is a risk that the employee takes frankly. If an employee shows up to work habitually drunk for instance, the responsible thing for the employer to do is to document that and speak to the employee, hopefully correct the situation and then if the employee continues to do that, fire them. If the employee then goes to the employer and asks why they fired him/her, they can reply that they fired them because they came to work drunk. That is all that the bill requires an employer to do. Firing somebody for any reasons unless you are a member to those protected classes, you do it. This bill doesn't set any new standards. So if you come to work drunk or you are taking drugs or you are a slacker or you are late and you go to your employer and say, "I want to know the reason" then you can get it.

SENATOR BROWN: I respect your opinion on this. I have a different opinion and am just asking if you can at least concede to some small degree that there is the potential for an employer to have an employee that this is going to cause a problem, for either the employee that is terminated or the employer who would rather just let the problem just go away?

SENATOR KRUEGER: Senator Brown, I don't want to delve into the limit, the bottom of the bag. If you want it at that standard where there may be some possible or question at some point in the indefinite future where somebody may potentially have a problem, I will concede that.

SENATOR BROWN: One last question, would you believe that I personally have seen a number of cases that fit that description?

SENATOR TROMBLY: I don't believe that you would tell a falsehood.

SENATOR BROWN: Thank you.

SENATOR RUSSMAN: In the 26 years that I have been practicing law, I have had the good fortune of representing a lot of paying clients, but I have also had the good fortune of representing a lot of poor people and people that are indigent. Some of those people get fired from jobs. I think that this bill is not an undue burden on the small business person and as Senator Francoeur suggested perhaps it will just be a form letter so that it would be something very easy to just print off of the computer, but at the same time, I think that this bill is really a matter of fairness to our fellow human beings. I think that if any of us were working for somebody, and I would dare say that most of us don't, I would certainly think that we would want to know why we were fired if in fact we were fired. To me, it is a bill about fundamental fairness and I would hope that we could support it.

SENATOR FRASER: Senator Trombly, what is the penalty if the employer fails to comply?

SENATOR TROMBLY: I don't think that the bill has a penalty in it, Senator Fraser. I don't know, I would have to check to see if there would be recourse through the Labor Commissioner's requirements at the time of the request.

SENATOR FRASER: Thank you.

Senator Gordon moved to have **SB 82**, relative to the termination of employees, laid on the table.

**Adopted.**

### **LAID ON THE TABLE**

**SB 82**, relative to the termination of employees.

**SB 40**, relative to the health care fund. Finance Committee. Vote 8-0. Ought to pass with amendment, Senator Squires for the committee.

**1999-0144s**

**01/09**

### **Amendment to SB 40**

Amend RSA 167:74, V as inserted by section 1 of the bill by replacing it with the following:

V. Notwithstanding any provision of law to the contrary, beginning with the fiscal biennium ending June 30, 2003, the amount of principal in the fund shall remain at least the same at the end of each biennium as it was at the beginning of the biennium, unless specifically authorized by both houses of the general court in separate legislation.

**1999-0144s**

### **AMENDED ANALYSIS**

This bill requires any transfer of funds from the health care fund which is not for the purposes stated for such fund to be introduced in

separate legislation requiring 2/3 approval of both houses of the general court. The bill also requires the principal in the fund to remain at least the same amount at the end of each biennium as at the beginning of such biennium, unless specifically authorized by the general court.

### TAPE CHANGE

SENATOR SQUIRES: **TAPE INAUDIBLE** and we do that by a separate bill passed by both bodies of the legislature. If that is what the legislature wants to do that is fine, but it is not satisfactory for a commissioner or anyone else to maneuver around and remove funds from this rapidly diminishing source of healthcare resources for purposes that are not related to it. This bill simply says that if you want to do that you must have a separate bill passed by each body. I hope that you will support it.

**Amendment adopted.**

**Ordered to third reading.**

Senator Wheeler offered the following Resolution:

### 1999 SESSION

99-1012

05/09

### SENATE RESOLUTION

### 2

**A RESOLUTION** urging the President of the United States and Congress to prohibit federal recoupment of state tobacco settlement recoveries.

**SPONSORS:** Sen. Larsen, Dist 15; Sen. Wheeler, Dist 21; Sen. Blaisdell, Dist 10; Sen. Cohen, Dist 24; Sen. Hollingworth, Dist 23; Sen. Krueger, Dist 16; Sen. Pignatelli, Dist 13; Sen. J. King, Dist 18; Sen. Klemm, Dist 22; Sen. McCarley, Dist 6; Sen. Fernald, Dist 11; Sen. Disnard, Dist 8; Sen. Trombly, Dist 7

**COMMITTEE:** [committee]

### ANALYSIS

This senate resolution urges the President of the United States and Congress to prohibit federal recoupment of state tobacco settlement recoveries.

99-1012

05/09

### STATE OF NEW HAMPSHIRE

*In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine*

**A RESOLUTION** urging the President of the United States and Congress to prohibit federal recoupment of state tobacco settlement recoveries.

Whereas, the state of New Hampshire settled its litigation against the tobacco industry on November 23, 1998; and

Whereas, the federal government has declined to bring its own lawsuit against the tobacco industry; and



Whereas, the federal government through the Health Care Financing Administration has asserted that it is entitled to a significant share of the state settlement on the basis that it represents the federal share of Medicaid costs; and

Whereas, the federal government asserts that it is authorized and obligated, under the Social Security Act, to collect its share of any settlement funds attributable to Medicaid; and

Whereas, the state lawsuit was brought for violation of state law under state law theories, and the state lawsuit did not make any federal claims; and

Whereas, the state bore all the risk and expense in the litigation brought in state court, and settled without any assistance from the federal government; and

Whereas, the state is entitled to all of the funds negotiated in the tobacco settlement agreement without any federal claim; now, therefore, be it

Resolved by the Senate:

That the United States Senate pass S. 346, which amends Title XIX of the Social Security Act to prohibit the recoupment of funds recovered by states from one or more tobacco manufacturers; and

That the President of the United States and Congress prohibit federal recoupment of state tobacco settlement recoveries; and

That copies of this resolution, signed by the president of the senate, be forwarded by the senate clerk to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the New Hampshire Congressional delegation.

SENATOR K. WHEELER: I rise in support of SR 2 urging the President of the United States and Congress to prohibit federal recoupment of state tobacco settlement recoveries. On November 23, 1998 46 states including New Hampshire reached a settlement with several major tobacco companies for monetary damages resulting from smoking related diseases. These funds were the result of hard work and determination of the state attorney general's office and the state of New Hampshire incurred all risks and costs associated with the lawsuit. Having assumed these risks, the state should expect that these funds will not be compromised in any way; however, in late 1998 the U.S. Department of Health and Human Services notified the state of its intention to recoup the federal match from the monies that the states received as a result of the lawsuit, citing existing Medicaid law. It was the states which initiated the suit and the federal government played no role in arbitrating a resolution. Additionally, the settlement makes no mention of Medicaid. After several state legislatures protested the federal governments' actions, the U.S. Department of Health and Human Services suspended its recoupment efforts. This suspension should be converted to an outright prohibition. This resolution urges the congress to support and pass SR 2, which would prohibit any future attempts by the federal government to claim a portion of the settlement monies. New Hampshire is currently discussing various proposals on how best to expend the settlement money and these efforts should not be subject to further uncertainty as to the status of settlement funds. By quickly enacting a recoupment prohibition, the congress will help to ensure our efforts to reduce youth smoking and prohibit youth access to tobacco products. Thank you, Mr. President.

**Adopted.**

Senator Larsen offered the following Resolution:

**2/18/99 0179s**

**1999 SESSION**

99-1013

03/01

**SENATE RESOLUTION**

**3**

**A RESOLUTION** urging the Federal Communications Commission to act favorably and promptly on the New Hampshire Public Utilities Commission's petition for relief concerning telephone area code conservation measures.

**SPONSORS:** Sen. Larsen, Dist 15; Sen. Blaisdell, Dist 10; Sen. Hollingworth, Dist 23; Sen. J. King, Dist 18; Sen. Pignatelli, Dist 13; Sen. Fernald, Dist 11; Sen. Wheeler, Dist 21; Sen. Disnard, Dist 8; Sen. Trombly, Dist 7; Sen. Cohen, Dist 24; Sen. Gordon, Dist 2

**COMMITTEE:** [committee]

**ANALYSIS**

This resolution urges the Federal Communications Commission to act favorably and promptly on the New Hampshire Public Utilities Commission's petitions requesting authority to implement area code conservation measures.

2/18/99 0179s

99-1013

03/01

**STATE OF NEW HAMPSHIRE**

*In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine*

**A RESOLUTION** urging the Federal Communications Commission to act favorably and promptly on the New Hampshire Public Utilities Commission's petition for relief concerning telephone area code conservation measures.

Whereas, New Hampshire's single telephone area code is in immediate jeopardy of being exhausted; and

Whereas, the loss of a single area code would mean a loss of identity for New Hampshire; and

Whereas, the cost of adding a new area code to New Hampshire would be a significant detriment to business and residents; and

Whereas, the disruption caused by a new area code should only be required if it is absolutely necessary; and

Whereas, the exhaustion of the 603 area code is predominantly linked to the antiquated and inefficient assignment and use of telephone numbers; and

Whereas, the North American Numbering Plan Administration, acting under authority of the Federal Communications Commission, has declared New Hampshire in a "jeopardy" state, causing the state to begin planning for a second area code; and

Whereas, the authorization of thousands block number pooling may eliminate the need for New Hampshire to surrender its single area code; and

Whereas, the Federal Communications Commission has begun a process to determine a more efficient method of assigning telephone numbers and has received a general consensus of opinions that thousands number block pooling is the most logical and immediate solution; and

Whereas, the Federal Communications Commission has blocked state efforts to conserve the existing area code allocation while the Federal Communications Commission decides on a national solution to the problem; and

Whereas, the New Hampshire public utilities commission has filed comments in NSD File No. L-98-134, petitioning the Federal Communications Commission to expeditiously issue an order establishing thousands block number pooling as an immediate step to minimize this problem; and

Whereas, the New Hampshire public utilities commission has petitioned the Federal Communications Commission to reconsider its order in CC Docket No. 96-98 prohibiting states from imposing telephone number conservation; and

Whereas, unless the Federal Communications Commission acts immediately, the New Hampshire public utilities commission will be required to begin the second area code proceeding, and implement the new area code by the fourth quarter of the year 2000; and

Whereas, the development of thousands block number pooling will take 10 to 18 months following a Federal Communications Commission order; and

Whereas, the exhaustion of the 603 area code is expected to be complete by the end of the year 2000; and

Whereas, unless the Federal Communications Commission issues favorable orders in time to implement thousands block number pooling by June 2000, the ability to preserve the 603 single area code will be lost forever; now, therefore, be it

Resolved by the Senate:

That the senate of New Hampshire hereby urges the Federal Communications Commission to act promptly and favorably on the New Hampshire public utilities commission's petitions for relief in order to undertake telephone area code conservation measures; and

That the senate of New Hampshire hereby urges the Federal Communications Commission to authorize the immediate implementation of thousands block number pooling; and

That copies of this resolution be forwarded by the senate clerk to the chairman and to each of the members of the Federal Communications Commission, and to the chief of the Network Services Division of the Common Carrier Bureau of the Federal Communications Commission.

**Adopted.**

**1999-0179s**

### **Floor Amendment to SR 3**

Amend the resolution by replacing the seventh paragraph after the title with the following:

Whereas, the authorization of thousands block number pooling may eliminate the need for New Hampshire to surrender its single area code; and

Amend the resolution by replacing the tenth paragraph after the title with the following:

Whereas, the New Hampshire public utilities commission has filed comments in NSD File No. L-98-134, petitioning the Federal Communications Commission to expeditiously issue an order establishing thousands block number pooling as an immediate step to minimize this problem; and



SENATOR LARSEN: I offer SR 3 to call attention to a federal problem which, if left unchanged, will add unnecessary chaos and cost to New Hampshire's businesses and consumers. Recently the New Hampshire PUC, Public Utility Commission, petitioned the Federal Communications Commission to be able to save New Hampshire sole 603 area code. This resolution will add the Senate's voice to that of the PUC urging the federal government to act quickly and appropriately to help us resolve the issue. The PUC has requested that the Federal Communications Commission allow New Hampshire the flexibility to conserve phone numbers under the 603 area code. There is currently no shortage of numbers under our current single area code; in fact, there are more than eight available telephone numbers for every effective line; however, because of the current system of giving away ten thousand numbers in blocks to our phone companies, and I understand that we have 13 small independent companies, we are artificially running out of new phone numbers. By enacting thousand block numbers instead of ten thousand block numbers, the state would be able to have a more efficient means to allocate phone numbers and therefore avoid the need for a new area code, a secondary code. We can only do this if the FCC approves this. Such a change would also permit time for the FCC to establish a long-term solution to the numbering problem. The cost of adding a secondary code to New Hampshire would be a significant impediment to business and an unnecessary disruption to consumers. It might result...if we do not get this passed, in next door neighbors having right here in New Hampshire, having different area codes and all of us having to learn ten numbers instead of our familiar seven numbers. If the FCC fails to offer significant relief measures within the next 30 days, it will be too late to prevent the implementation of this new area code. In order to meet the current FCC ruling, the PUC must begin implementing the secondary code for our state by this summer, with a switch in its code taking place in the year 2000. Once this process has begun, it cannot be stopped. I urge my colleagues to support this resolution and the floor amendment, which you see that accompanies it encouraging the FCC to act favorably and promptly on New Hampshire's PUC petition for relief on the telephone area code conservation measures. Just to explain the floor amendment, because this was in drafting and people added names, some of the people in the business had not had a chance to see the exact wording. They requested two minor amendments to our original resolution, one of which was to add the word "may" so that it "may eliminate the need for New Hampshire to surrender the single area code." And also in the tenth paragraph, there was a change to replace the word "alleviate" to "minimize." They felt more comfortable with this floor amendment. I have no problem with it. I hope that you would support it. Thank you.

### **Adopted.**

Senator McCarley offered the following Resolution:

### **1999 SESSION**

99-1014

04/09

### **SENATE RESOLUTION**

**4**

**A RESOLUTION** calling on the President and the Congress to fully fund the federal government's share of the average per pupil expenditure in public elementary and secondary schools in the United States under the Individuals with Disabilities Education Act.

SPONSORS: Sen. Larsen, Dist 15; Sen. Johnson, Dist 3; Sen. Blaisdell, Dist 10; Sen. McCarley, Dist 6; Sen. Krueger, Dist 16; Sen. Pignatelli, Dist 13; Sen. Hollingworth, Dist 23; Sen. J. King, Dist 18; Sen. Cohen, Dist 24; Sen. Klemm, Dist 22; Sen. McCarley, Dist 6; Sen. Fernald, Dist 11; Sen. Wheeler, Dist 21; Sen. Disnard, Dist 8; Sen. Trombly, Dist 7

COMMITTEE: [committee]

### ANALYSIS

This senate resolution urges the President and the Congress to fully fund the federal government's share of the average per pupil expenditure in public elementary and secondary schools in the United States under the Individuals with Disabilities Education Act.

99-1014

04/09

### STATE OF NEW HAMPSHIRE

*In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine*

A RESOLUTION calling on the President and the Congress to fully fund the federal government's share of the average per pupil expenditure in public elementary and secondary schools in the United States under the Individuals with Disabilities Education Act.

Whereas, since its enactment in 1975, the Individuals with Disabilities Education Act (IDEA) has helped millions of children with special needs to receive a quality education and to develop to their full capacities; and

Whereas, the IDEA has moved children with disabilities out of institutions and into public school classrooms with their peers; and

Whereas, the IDEA has helped break down stereotypes and ignorance about people with disabilities, improving the quality of life and economic opportunity for millions of Americans; and

Whereas, when the federal government enacted the Individuals with Disabilities Education Act, it promised to fund 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States; and

Whereas, the federal government currently funds, on average, less than 9 percent of the actual cost of special education services; and

Whereas, local school districts and state government end up bearing the largest share of the cost of special education services; and

Whereas, the federal government's failure to adequately fulfill its responsibility to special needs children undermines public support for special education and creates hardship for disabled children and their families; now, therefore, be it

Resolved by the Senate:

That the New Hampshire senate urges the President and the Congress to fund 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States as promised under the IDEA to ensure that all children, regardless of disability, receive a quality education and are treated with the dignity and respect they deserve; and

That copies of this resolution be forwarded by the senate clerk to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the New Hampshire congressional delegation.

SENATOR MCCARLEY: This resolution urges Congress to meet its stated obligation under the 1975 Individuals with Disabilities Education Act to fund 40 percent of the cost of providing an appropriate public education to children with disabilities. Under IDEA, Congress promised to fund 40 percent of the costs of providing a level of educational services appropriate to the particular needs of children with disabilities. Currently Congress is funding less than nine percent. Federal funding has never exceeded the current level. To state it very simply, this funding is important. It represents a commitment made by Congress and it is a commitment that should be met. IDEA was enacted in 1975 and became effective in 1978. It is now 1999 over 20 years later and although New Hampshire is and has been complying with the federal requirements, Congress has not fulfilled its funding obligation. Although New Hampshire has put in place, the infrastructure, the administration, the procedures, the personnel and the programs to provide special education services to children whose needs meet federal guidelines. Congress has continued to avoid meeting its responsibility. The added burden on the school districts to make up for the federal shortfall is obvious. Our legislature is in the midst of making some very difficult choices and decisions about how to meet the state obligation to fund public education. We need to know that the commitments made at the federal level will be honored. Washington's failure thus far to meet its stated commitment to funding special education is a problem that only gets worse with time. Since the enactment of IDEA in 1975, a series of amendments have been added to the requirements with which the state must comply. Added requirements mean higher costs for the state. These additional mandates would be less onerous if the federal government simply fulfilled its commitment. IDEA is a good idea. It has resulted in dramatic improvements in the way that New Hampshire educates children with disabilities. New Hampshire has made significant progress in meeting the challenges of providing appropriate public education to special needs students in the most integrated setting possible. Now it is time, in fact it is well past time for Congress to come through with its part of its mutual commitment. I urge you to vote to send this resolution to Congress, the President and the New Hampshire Congressional delegation. I would add that we have a number of Senate sponsors on this bill. I apparently was so supportive of it that I am sponsoring it twice, so if someone else would like to have their name added and take mine off the second time that it is on here, I would be delighted to have that happen. Thank you.

**Question is on the adoption of the resolution.**

**A roll call was requested by Senator F. King.**

**Seconded by Senator Francoeur.**

**The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Roberge, Blaisdell, Fernald, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Wheeler, Hollingworth, Cohen.**

**The following Senators voted No:**

**Yeas: 23 - Nays: 0**

**Adopted.**



### HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 58**, establishing a committee to study open adoption in New Hampshire.

**HB 92**, exempting permanently disabled veterans from the requirement of reestablishing their disability status for the division of motor vehicles every 4 years to prove eligibility for special license plates.

**HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products.

**HB 113**, affirming sovereign immunity as it relates to the Claremont ruling.

**HB 244**, relative to the corporate charter of the Laconia Airport Authority.

**HB 245-FN**, relative to fees and appropriations to the division of safety services.

**HB 253**, allowing ballots to be examined and counted prior to the opening of polls on election day.

**HB 262-L**, relative to emergency expenditures and over expenditures by school boards.

**HB 364**, relative to expenditure of funds received from the United States on account of national forest lands in this state.

### INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 58 - 364 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

**Adopted.**

#### First and Second Reading and Referral

**HB 58**, establishing a committee to study open adoption in New Hampshire. **Judiciary.**

**HB 92**, exempting permanently disabled veterans from the requirement of reestablishing their disability status for the division of motor vehicles every 4 years to prove eligibility for special license plates. **Transportation.**

**HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products. **Ways and Means.**

**HB 113**, affirming sovereign immunity as it relates to the Claremont ruling. **Judiciary.**

**HB 244**, relative to the corporate charter of the Laconia Airport Authority. **Transportation.**

**HB 245-FN**, relative to fees and appropriations to the division of safety services. **Transportation.**

**HB 253**, allowing ballots to be examined and counted prior to the opening of polls on election day. **Public Affairs.**

**HB 262-L**, relative to emergency expenditures and over expenditures by school boards. **Education.**

**HB 364**, relative to expenditure of funds received from the United States on account of national forest lands in this state. **Wildlife and Recreation.**

## ANNOUNCEMENTS

### RESOLUTION

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, all bills ordered to third reading be by this Resolution, read a third time and passed.

**Adopted.**

### LATE SESSION

Senator Cohen moved that the business of the day being completed, that the Senate be in recess for the sole purpose of introducing legislation, printing of bills, referring bills to committee, scheduling committee hearings and Enrolled Bills Reports and amendments and that when we adjourn we adjourn to the Call of the Chair.

**Adopted.**

### Third Reading and Final Passage

**SB 74**, relative to the rulemaking authority of the real estate commission concerning practice relating to certain dwellings.

**SB 40**, relative to the health care fund.

Senator Johnson moved that we be in recess for purpose of introducing legislation and referring to committees and that we be in recess to the Call of the Chair.

**Adopted.**

**In recess.**

**Out of Recess.**

## INTRODUCTION OF SENATE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, Senate Bills numbered SB 182 - CACR 23 shall be by this resolution read a first and second time by the therein listed titles, laid on the table for printing and referred to the therein designated committees.

**Adopted.**

### First and Second Reading and Referral

99-0461

**SB 182-FN**, relative to eligibility for ordinary death benefits under the New Hampshire retirement system. (Sen. J. King, Dist 18; Sen. Hollingworth, Dist 23; Rep. Dwyer, Hills 43; Rep. Christie, Rock 22: **Insurance**)

99-0482

**SB 183-FN-A**, implementing recommendations developed through a state-wide health care planning process and continually appropriating a special fund. (Sen. Squires, Dist 12; Sen. Blaisdell, Dist 10; Sen. Hollingworth, Dist 23: **Public Institutions, Health and Human Services**)

99-0516

**SB 184-FN-A**, repealing the tax on nuclear station property. (Sen. Francoeur, Dist 14; Sen. Johnson, Dist 3; Sen. Brown, Dist 17; Rep. Bradley, Carr 8: **Ways and Means**)

99-0638

**SB 185**, relative to property settlements in cases where certain domestic relationships have terminated. (Sen. Trombly, Dist 7; Rep. DeChane, Straf 6; Rep. Splaine, Rock 34: **Judiciary**)

99-0831

**SB 186-FN**, relative to additional cost of living adjustments for certain retired group II firemen. (Sen. J. King, Dist 18; Sen. Disnard, Dist 8; Sen. Hollingworth, Dist 23; Sen. Trombly, Dist 7; Rep. Dwyer, Hills 43: **Insurance**)

99-0833

**SB 187 -FN-LOCAL**, relative to payment of group health insurance premiums for eligible retired teachers in the New Hampshire retirement system. (Sen. Blaisdell, Dist 10; Rep. Torr, Straf 12: **Insurance**)

99-0905

**SB 188-LOCAL**, allowing school districts to have a special vote on a bond issue in the same calendar year in which they voted on the bond issue. (Sen. Wheeler, Dist 21; Rep. M. Smith, Straf 8; Rep. Estabrook, Straf 8; Rep. Spang, Straf 8; Rep. Lent, Straf 8: **Public Affairs**)

99-0797

**SB 189-FN**, relative to the establishment of a civil rights act. (Sen. Pignatelli, Dist 13; Sen. Larsen, Dist 15; Sen. Squires, Dist 12; Sen. Trombly, Dist 7; Rep. Peterson, Hills 8; Rep. Bradley, Carr 8; Rep. Nordgren, Graf 10; Rep. J. Pratt, Ches 2; Rep. Konys, Hills 33: **Judiciary**)

99-0082

**SB 190-FN**, relative to grievance procedures of managed care entities. (Sen. Squires, Dist 12: **Insurance**)

99-0144

**SB 191**, relative to the New Hampshire higher educational and health facilities authority. (Sen. Larsen, Dist 15; Sen. D'Allesandro, Dist 20; Sen. Squires, Dist 12; Sen. Trombly, Dist 7; Sen. Cohen, Dist 24; Rep. Peterson, Hills 8; Rep. Wallner, Merr 24; Rep. Anderson, Merr 7: **Education**)

99-0860

**SB 192**, relative to vital records. (Sen. D'Allesandro, Dist 20; Rep. Emerton, Hills 7: **Public Institutions, Health and Human Services**)

99-0861

**SB 193-FN**, relative to holiday pay for certain state employees. (Sen. J. King, Dist 18; Sen. F. King, Dist 1; Rep. Dwyer, Hills 43: **Executive Departments and Administration**)

99-0917

**SB 194-FN-A**, dedicating certain sums in the moose management fund for the payment for damage done by moose to certain trees. (Sen. F. King, Dist 1; Sen. D'Allesandro, Dist 20; Sen. Below, Dist 5; Rep. P. Davis, Coos 1: **Wildlife and Recreation**)

99-0942

**SB 195-FN-A**, appropriating funds for sludge testing. (Sen. Russman, Dist 19: **Environment**)



99-0978

**SB 196-FN-LOCAL**, relative to electric rate reduction financing. (Sen. Johnson, Dist 3; Sen. Gordon, Dist 2; Sen. Hollingworth, Dist 23; Sen. Below, Dist 5; Rep. Gilmore, Straf 11; Rep. Chandler, Carr 1; Rep. Scanlan, Graf 11; Rep. Howard, Carr 10; Rep. Torressen, Carr 10: **Energy and Economic Development**)

99-0980

**SB 197-FN-A**, establishing a pilot program for methadone maintenance treatment and making an appropriation therefor. (Sen. Wheeler, Dist 21; Sen. Squires, Dist 12; Rep. Chabot, Hills 48; Rep. O'Keefe, Rock 21; Rep. M. Fuller Clark, Rock 36; Rep. Copenhaver, Graf 10: **Public Institutions, Health and Human Services**)

99-0993

**SB 198 -FN**, relative to certification of persons installing and servicing propane gas and heating oil equipment. (Sen. McCarley, Dist 6: **Executive Departments and Administration**)

99-1002

**SB 199**, establishing certain standards of accountability for health maintenance organizations and other entities providing health insurance through a managed care system. (Sen. Blaisdell, Dist 10; Sen. Wheeler, Dist 21; Sen. Russman, Dist 19; Sen. Hollingworth, Dist 23; Sen. Squires, Dist 12; Rep. Pilliod, Belk 3; Rep. Copenhaver, Graf 10; Rep. Avery, Ches 8; Rep. Nordgren, Graf 10; Rep. Ham, Graf 4: **Insurance**)

99-0895

**SB 200**, relative to child care licensing procedures. (Sen. Gordon, Dist 2; Rep. Emerton, Hills 7; Rep. Gile, Merr 16; Rep. Pilliod, Belk 3; Rep. Fuller Clark, Rock 36: **Public Institutions, Health and Human Services**)

99-0921

**SB 201-FN**, reclassifying non-support as a felony under certain circumstances. (Sen. Pignatelli, Dist 13; Sen. McCarley, Dist 6: **Judiciary**)

99-0999

**SB 202-FN**, relative to collective bargaining rights of public employees. (Sen. D'Allesandro, Dist 20; Sen. Wheeler, Dist 21: **Executive Departments and Administration**)

99-0976

**SB 203-FN-A-LOCAL**, authorizing electronic games of chance at race-tracks. (Sen. Blaisdell, Dist 10; Sen. Klemm, Dist 22; Sen. Fraser, Dist 4; Sen. Disnard, Dist 8; Sen. J. King, Dist 18; Rep. Franks, Hills 26; Rep. Raynowska, Rock 26; Rep. Wallin, Merr 15; Rep. Foster, Hills 10; Rep. B. Baroody, Hills 42: **Finance**)

99-0145

**SB 204**, establishing the New Hampshire excellence in higher education endowment trust fund. (Sen. Larsen, Dist 15; Sen. Gordon, Dist 2; Rep. Thulander, Hills 6; Rep. Peterson, Hills 8: **Education**)

99-0388

**SB 205-FN**, expanding medical coverage to pay dental assistance for adults on medicaid. (Sen. Wheeler, Dist 21; Sen. McCarley, Dist 6; Sen. Hollingworth, Dist 23; Rep. Copenhaver, Graf 10; Rep. M. Fuller Clark, Rock 36; Rep. Francoeur, Rock 22: **Insurance**)

99-0481

**SB 206-FN-A-LOCAL**, establishing the tobacco use prevention fund and continually appropriating a special fund. (Sen. Squires, Dist 12; Sen. Hollingworth, Dist 23; Rep. Pilliod, Belk 3; Rep. M. Fuller Clark, Rock 36: **Public Institutions, Health and Human Services**)

99-0619

**SB 207**, relative to authorizing bonds for the construction and renovation of regional vocational education centers. (Sen. Larsen, Dist 15; Sen. Pignatelli, Dist 13; Sen. Blaisdell, Dist 10; Sen. F. King, Dist 1; Sen. Johnson, Dist 3; Sen. Fernald, Dist 11; Rep. O'Hearn, Hills 26; Rep. Vaughn, Rock 35; Rep. Torr, Straf 12; Rep. LaRose, Hills 27; Rep. Hoadley, Merr 24: **Education**)

99-0839

**SB 208-FN**, establishing a "parents as scholars" program. (Sen. Wheeler, Dist 21; Sen. McCarley, Dist 6; Rep. Durham, Hills 22; Rep. M. Fuller Clark, Rock 36; Rep. Estabrook, Straf 8: **Public Institutions, Health and Human Services**)

99-0882

**SB 209-FN-LOCAL**, changing the jurisdiction over domestic relations matters from the superior courts to the district courts and establishing a study committee on certain matters concerning superior court justices. (Sen. Gordon, Dist 2: **Judiciary**)

99-0884

**SB 210-FN-LOCAL**, relative to payment by the state for certain court-ordered placements of special education students. (Sen. Gordon, Dist 2; Sen. Squires, Dist 12; Sen. Johnson, Dist 3; Sen. Hollingworth, Dist 23; Rep. Alger, Graf 9; Rep. O'Hearn, Hills 26; Rep. Belvin, Hills 14: **Education**)

99-0897

**SB 211-FN-A**, reestablishing certain credits against the business profits tax. (Sen. Hollingworth, Dist 23; Sen. J. King, Dist 18: **Ways and Means**)

99-0903

**SB 212-FN**, requiring the insurance department to develop a plan to address the needs of persons with chronic illnesses and disabilities. (Sen. Squires, Dist 12; Sen. Hollingworth, Dist 23; Sen. Russman, Dist 19: **Insurance**)

99-0911

**SB 213-FN**, changing the name of the fish and game department to the wildlife department. (Sen. Wheeler, Dist 21; Sen. Cohen, Dist 24: **Wild-life and Recreation**)

99-0937

**SB 214-FN**, establishing new procedures under the certificate of need law for certain ambulatory surgical facilities. (Sen. Squires, Dist 12: **Public Institutions, Health and Human Services**)

99-0940

**SB 215**, transferring certain responsibilities for shellfish harvesting and regulation. (Sen. Hollingworth, Dist 23; Sen. J. King, Dist 18: **Environment**)

99-0944

**SB 216-FN**, allowing veterans the right to purchase credit in the retirement system for certain service in the armed forces. (Sen. Trombly, Dist 7; Rep. Dwyer, Hills 43: **Insurance**)

99-0947

**SB 217-FN**, relative to nonresident real estate brokers doing business in this state. (Sen. Johnson, Dist 3: **Executive Departments and Administration**)

99-0951

**SB 218-FN-LOCAL**, regulating the land application of sewage sludge. (Sen. Wheeler, Dist 21; Sen. D'Allesandro, Dist 20; Sen. Disnard, Dist 8; Sen. Russman, Dist 19; Sen. Cohen, Dist 24; Rep. B. Hall, Hills 20; Rep. Owen, Merr 6: **Environment**)

99-0954

**SB 219-FN-LOCAL**, establishing a procedure for providing educational improvement assistance to local school districts. (Sen. McCarley, Dist 6; Sen. Cohen, Dist 24; Sen. D'Allesandro, Dist 20: **Education**)

99-0955

**SB 220-FN**, relative to the disclosure of child abuse and neglect information. (Sen. McCarley, Dist 6: **Public Institutions, Health and Human Services**)

99-0966

**SB 221-FN**, relative to competitive bidding for state construction contracts. (Sen. D'Allesandro, Dist 20; Sen. Larsen, Dist 15; Sen. Trombly, Dist 7: **Executive Departments and Administration**)

99-0970

**SB 222-FN-A-LOCAL**, relative to guarantee of loans to local development organizations. (Sen. F. King, Dist 1; Sen. Hollingworth, Dist 23: **Internal Affairs**)

99-0977

**SB 223-FN-A**, establishing a wellness and primary prevention council and making an appropriation therefor. (Sen. Wheeler, Dist 21; Sen. Squires, Dist 12; Sen. Gordon, Dist 2; Sen. Pignatelli, Dist 13; Sen. McCarley, Dist 6; Rep. Pilliod, Belk 3; Rep. French, Merr 3; Rep. Keans, Straf 16; Rep. J. Brown, Straf 17; Rep. Richardson, Ches 12: **Public Institutions, Health and Human Services**)

99-0992

**SB 224**, relative to stenographic records of adjudicative hearings before licensing boards. (Sen. Gordon, Dist 2: **Executive Departments and Administration**)

99-1008

**CACR 23**, relating to the responsibility and authority of the general court to determine the content, extent, and funding of a public education. Providing that the general court shall have the exclusive authority to determine the content, extent, and funding of a public education and that the state may fulfill its responsibility to provide to all citizens the opportunity for a public education by exercising its power to levy assessments, rates, and taxes, or by delegating this power, in whole or part, to a political subdivision; provided that upon delegation, such assessments, rates, and taxes are proportional and reasonable throughout the state or the political subdivision in which they are imposed. (Sen. Brown, Dist 17; Sen. Krueger, Dist 16; **Education**)

**In Recess to the Call of the Chair.**

**Out of Recess.**



## INTRODUCTION OF SENATE BILLS

Senator Cohen offered the following Resolution:

**RESOLVED**, that in accordance with the list in the possession of the Clerk, Senate Bills numbered 225-226 shall be by this resolution read a first and second time by the therein listed titles, laid on the table for printing and referred to the therein designated committees.

**Adopted.**

### First and Second Reading and Referral

99-0984

**SB 225-FN**, relative to a pharmaceutical program for low income individuals. (Sen. Hollingworth, Dist 23; Sen. McCarley, Dist 6; Sen. J. King, Dist 18; Sen. Wheeler, Dist 21; Sen. Squires, Dist 12; Rep. O'Keefe, Rock 21: **Public Institutions, Health and Human Services**)

99-0985

**SB 226-FN**, relative to the real estate practice act and the powers and duties of the real estate commission. (Sen. Gordon, Dist 2: **Executive Departments and Administration**)

## LATE SESSION

### RESOLUTION

Senator Cohen moved that the business of the day being completed that the Senate now adjourn until Thursday, March 4, 1999 at 10:00 a.m.

**Adopted.**

**Adjournment.**

*March 4, 1999*

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by the Father David P. Jones, Senate Chaplain.

Good morning. In the cartoon strip Peanuts, when it is baseball season, Lucy spends a lot of time standing out in left field talking to herself, looking around, providing unsolicited advice to the pitcher, Charlie Brown and generally waiting for somebody to hit a ball out her way so that she can try to field it. It happens so rarely that when a fly ball does come in her direction she isn't always sure what to do with it. You all here in the Senate, may have had moments of feeling a little bit like Lucy stuck out in the left field of Claremont, but here it comes. You are about to have a fly ball hit your way and all of us on the outside of the circle of 24 wish you good luck. All of the eyes in the stands are upon you to see how well you field this ball. Let us pray:

*Lord of the long fly ball give the members of this Senate nimble feet to run, balanced coordination to catch, perceptive minds to know what to do next, quick reflexes to be able to pull it off and egos big enough to be bold but small enough to be able to play as a team. Protect them, protect us, and keep the glare of our own narrow views from blinding us lest we drop the ball.*

*Amen.*

Senator McCarley led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS COMMITTEE REPORTS

**SB 20**, limiting the price for resale of tickets to motor sports events at the New Hampshire International Speedway to the original purchase price. Energy and Economic Development Committee. Vote 7-0. Ought to pass with amendment, Senator F. King for the committee.

**1999-0266s**

**09/01**

### Amendment to SB 20

Amend the title of the bill to read as follows:

**AN ACT** relative to the sale or resale of tickets to motor sports events at the New Hampshire International Speedway.

Amend the bill by replacing all after the enacting clause with the following:

1 New Subdivision; Resale of Tickets to Motor Sports Events. Amend RSA 339 by inserting after section 76 the following new subdivision:

Resale of Tickets

339:77 Resale of Tickets.

I. No person shall sell, resell or exchange a ticket or tickets to a motor sports racing event while on the premises of the New Hampshire International Speedway without first obtaining written permission to conduct a sale or exchange from the New Hampshire International Speedway. However, no person shall sell, resell or exchange such ticket or tickets while on the premises of the New Hampshire International Speedway at a price higher than the price printed on the face of such ticket.

II. No person shall sell, resell or exchange a ticket or tickets to a motor sports racing event on the day of the event and 7 days prior to the event at the New Hampshire International Speedway on any state or federal highway within a 15 mile radius of New Hampshire International Speedway. This paragraph shall not apply to the sale of tickets by the New Hampshire International Speedway or its employees.

III. Any person who violates this section shall be guilty of a class B misdemeanor.

IV. For purposes of this section, "ticket" means any admittance, receipt, entrance ticket, or other evidence of a right to be admitted to an event at New Hampshire International Speedway.

2 Effective Date. This act shall take effect upon its passage.

**1999-0266s**

### AMENDED ANALYSIS

This bill limits the resale of tickets to motor sports events at the New Hampshire International Speedway to the original purchase price. No person may sell, resell, or exchange tickets to motor sports events at the speedway without first obtaining written permission from the speedway. The bill also prohibits the sale and exchange of tickets to such events on a highway within a 15 mile radius of the speedway, except when the sale is conducted by New Hampshire International Speedway.

Senator F. King moved to have **SB 20**, limiting the price for resale of tickets to motor sports events at the New Hampshire International Speedway to the original purchase price, laid on the table.

**Adopted.**

**LAI D ON THE TABLE**

**SB 20**, limiting the price for resale of tickets to motor sports events at the New Hampshire International Speedway to the original purchase price.

**SB 43**, creating a commission to research making Hilton Park in the city of Dover property of that city. Energy and Economic Development Committee. Vote 7-0. Ought to Pass, Senator F. King for the committee.

**Recess.**

**Out of Recess.**

**SENATOR F. KING:** Senate Bill 43 addresses the future of Hilton Park, which lies at the base of General Sullivan Bridge. The precise ownership of the park may be in question. Both the Department of Transportation and the Fish and Game Department exercise control over it. Over the years, highway projects have steadily shrunk the park and the park is the site where the first settlers set foot in what became Dover, which is supposed to be the oldest community in that area, that is subject to debate I guess. There is an interest among citizens of Dover relative to marking the historical significance of the site. I would like to now defer to Senator Wheeler for more detailed information.

**SENATOR WHEELER:** I want to reassure the Senate that it is not the intention of the sponsor or of anybody that might serve on this study committee to prohibit the uses of the park that exist now. I have met with director Wayne Vetter and I have assured him that he can carry on with his projects for boat launching expansion there, that the bill is perhaps incorrectly worded but the issue still stands that I believe there is significant interest in having a discussion about the state can recognize the historical significance of this particular piece of land.

**Adopted.**

**Ordered to third reading.**

**SB 78**, clarifying charitable trust solicitation campaign records. Executive Departments and Administration Committee. Vote 7-0. Ought to pass with amendment, Senator D'Allesandro for the committee.

**1999-0166s**

**01/03**

**Amendment to SB 78**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to contract requirements between a paid solicitor and a charitable trust.

Amend the bill by replacing all after the enacting clause with the following:

1 Contract and Disclosure Requirements. Amend RSA 7:28-c, V(a) to read as follows:

V.(a) There shall be a written contract between a paid solicitor and a charitable trust which shall clearly state:

(1) The respective obligations of the paid solicitor and the charitable trust ~~[and shall state]~~.

(2) *That the name and address of each person pledging to contribute, together with the date and amount of the pledge, shall be the sole exclusive property of the charitable trust with no rights to transfer, sell, rent, or otherwise cause to be used except by the originating charitable trust.*



(3) The amount of the gross revenue from the solicitation campaign that the charitable trust shall receive. Said amount shall be expressed as a fixed percentage of the gross revenue or as a reasonable estimate of the gross revenue, subject to and in accordance with the provisions of subparagraphs (b), (c), and (d) of this paragraph.

2 Reference Change. Amend RSA 7:28-f, I(h) to read as follows:

(h) Representing directly or by implication that a charitable trust shall receive a fixed or estimated percentage of the gross revenue from a solicitation campaign greater than identified in RSA 7:28-c, [FV] V(a) or [V] VI(a)(2).

3 Effective Date. This act shall take effect 60 days after its passage.

**1999-0166s**

### AMENDED ANALYSIS

This bill declares that certain information included in a contract between a paid solicitor and a charitable trust shall be the sole property of the charitable trust.

SENATOR D'ALLESANDRO: This bill will clarify any donor information collected by a charitable trust is the property of the charitable trust and not the property of any telemarketing or any other firm that campaigns for the charitable trusts. These records, under this bill, cannot be sold, rented or used by entities other than the charitable trusts. This will help ensure that people who donate to a charitable trust will not be solicited by other entities that use the charitable trust information. The amendment requires that the language that denotes that the donor information is the exclusive property of the charitable trust be a part of any contract with the solicitor. The committee recommends this bill ought to pass as amended.

**Amendment adopted.**

**Ordered to third reading.**

**SB 115**, relative to participation by certain judges in the state employee group health and dental insurance programs. Insurance Committee. Vote 8-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: Mr. President, I rise to report on SB 115 an act which allows part-time justices in the district court and part-time judges in the probate court to buy both health and dental insurance through the state employees program the same as we as legislators are allowed to do if we so desire. Senate Bill 115 would simply allow the individuals to purchase at their own cost, health and dental insurance if they so choose. The state would not subsidize any of the costs of purchasing, any administrative costs to the city would be negligible. The committee was unanimous in reporting this bill out as ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 161-L**, amending the contributory pension system for employees of the city of Manchester. Insurance Committee. Vote 7-1. Ought to Pass, Senator J. King for the committee.

SENATOR J. KING: I rise in support of SB 161. This bill makes changes to the law authorizing contributory pension system for employees of the city of Manchester. The provisions in SB 161 were approved first by the trustees of the Manchester Retirement System and then by the aldermen and then by the citizens of Manchester on a referendum. Through the representatives, those citizens are now seeking retroactive approval

of the changes that they wish to make to ensure that their pension system continues to operate efficiently and in their best interest. The changes relate to how the system is governed and how the funds are dispersed. The changes are reasonable, fiscally responsible and desired by the citizens that participate in the system. I urge my colleagues to pass this SB 161, which the Insurance Committee passed by a vote of 7 to 1.

**SENATOR D'ALLESANDRO:** I support this bill on behalf of the city of Manchester. In 1973 the city of Manchester was granted by this legislature the power to have its own retirement system. Four referendums have been placed before the people of Manchester since that time and they have all been passed. A glitch in the provision was that they had to come back to the legislature and get approval for these referendums prior to doing it. What this bill will do is it will make whole what has been done to this point in time, and in the future, other changes that are made will have to come back to the legislature for further approval. What this does is it takes care of a situation that is in place. There are about 1500 members of the system and about 400 retirees that are under this system and this affects them as the move forward. Thank you very much, Mr. President.

**SENATOR KRUEGER:** I would like to rise in support of this bill. I applaud the efforts of the committee in looking at this wonderful proposal to help the city of Manchester.

**Adopted.**

**Ordered to third reading.**

**SB 16**, relative to revocation of wills by divorce. Judiciary Committee. Vote 7-0. Ought to Pass, Senator Gordon for the committee.

**SENATOR GORDON:** Senate Bill 16 provides an addendum to legislation enacted in the last session. Current law provides that when spouses are divorced, unless an individual provides otherwise, the former spouse is deemed to have predeceased that individual; however, because of a quirk in the law, it is possible under certain circumstances that unrelated heirs of the former spouse may end up with the individual's estate. This bill corrects that unfortunate result and the committee recommends ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 26**, establishing a committee to study trustee process. Judiciary Committee. Vote 8-0. Ought to Pass, Senator Gordon for the committee.

**SENATOR GORDON:** Trustee process is a legal procedure involving the collection of debts. At times, it is determined that a debtor has no funds but that a third party is holding assets on behalf of the debtor, for example, a bank or an insurance company. In order to obtain the funds from the third party, they have to be named as a party in a legal action. This is an archaic and difficult process. This bill will create a study committee to investigate how trustee process can be made more useful, effective and efficient means of collecting debts. The committee recommends ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 45-FN-A**, allowing a waiver of interest for the time period of an extension of the date of payment of the legacies and successions tax. Judiciary Committee. Vote 7-1. Ought to Pass, Senator Trombly for the committee.

SENATOR TROMBLY: The committee heard this legislation and decided as a matter of fairness in a few exceptional circumstances that a state should be allowed to apply to the Department of Revenue Administration for a period not to have to pay interest on late payments. Currently, an accounting for an estate is due one year after the estate is open. Three months prior to that the executor or the administrator is required to make payment to the state of any legacy or succession tax due to the state because of the death. There are some circumstances where estates do not have the assets liquid at the time that the taxes are due or there are also some circumstances where, after the report of joint tenancies are filed with the state, because of a three-year call back rule, the state may actually call back into the estate, a piece of property that was transferred prior to the death of the party. In those circumstances the estate would have to pay a tax on that property and they just simply might not have it. Currently, the administrator or executor can apply to the probate court and get an extension for the filing of the tax, the paying of the tax, but if they get that then they have to pay interest in penalties. The committee felt that by a majority of 7 to 1 that there may be some circumstances in all fairness, which warranted the interest not be paid to the state of New Hampshire and thus allow the heirs or the legatees to reap the full benefit of the decedent's estate. It is discretionary. In order to get a succession you have to appeal to the commissioner and the authority is vested in with the commissioner, so whether or not the estate would have to pay the interest. We ask for your support in the interest of fairness. Thank you, Mr. President.

SENATOR FERNALD: I am the lone vote in the committee. I understand that the previous occupant of this state used to often be in the minority on things. This perhaps is a different sort of issue, but at any rate, I appreciate the sentiment that brought this bill forward, that there are people who owe a legacy and succession tax and when it is due nine months after date of death they don't have the cash so they can't pay it on time and when they do pay it they have to pay interest. It is possible that they could have penalties, but penalties can be waived under current law, so the question today is should interest be waived? I think that we have a principle in our statutes that we have a whole number of taxes and on all of them, if you are late paying them, you owe the state interest. It is an economic concept if you will, that there is a time value to money and if you are late that you should compensate the person that you are late paying. I think that we are on a little bit of a slippery slope that if we make an exception here, there is going to be hardship cases on any tax if you stop and think about it. Someone could come up with something and say that we should have hardship provisions on interest on all sorts of taxes. I think that we should just have one rule for all taxes, that interest is collected. It is a very small number of people, then I would say that during our recent real estate depression there certainly were people who had houses that they couldn't sell and the interest was accruing; fortunately, that real estate depression is behind us and I hope that we never see those days again. I think that this is a very small problem in terms of the number of people hit. I think that in a way it is a large principle and we should be consistent with our laws across the board on taxation and interest.

SENATOR TROMBLY: Senator Fernald, wasn't it true that we learned at the hearing that if an estate pays an anticipated tax and they indeed overpay that tax, that if the state refunds the overpayment within a certain period of time that the estate does not collect interest on the money that the state has been using?



SENATOR FERNALD: And that is also true on their income tax, income and dividends tax and any other tax that you pay to the state, if you overpay and you apply for a refund, you don't get interest back on the refund unless it has been more than 90 days. Again, it is a consistent rule for all taxes.

SENATOR TROMBLY: Thank you.

SENATOR RUSSMAN: I certainly hope that the previous speaker continues the tradition of being in the minority particularly on this vote. Having said that, certainly I mean the tax is still due and nobody is escaping the tax, but this case arose out of an elderly person that I represented that had a home that was in pretty rough shape. He had been able to maintain himself and maintain expenses without help from the state. He had a couple of elderly brothers and when the time came that he passed away and the estate was open, there was much to do to the house to try and get it in the repairable state. It took more time than it would to sell it because it ended up being the wrong time of year when they finished up the work and so on and so forth. So it takes a fair amount of time. As the Senator said, there would be a very small number and it is a matter of fairness. I mean, this is something that would help out elderly people that happen to be land poor or land rich or whatever you want to call it, or have a house that they may have to sell and there are still a number of those around. It just doesn't seem fair to do that. Now if you want to be fair to some of our elderly people that are in a particularly difficult spot that don't have an awful lot of money, this bill does go a ways towards doing that and I would urge you to support it.

SENATOR FERNALD: I think that it is fair for the state to collect interest on late payments and I think that the legislature traditionally, has agreed with that proposition. I would say to my fellow attorney, that he knows that the expression "tough cases make bad law." He brings up a tough case and now we want to make an exception for these few tough cases and we are ending up deviating from what has been a general principle for our tax collection.

**Question is on the committee report of ought to pass.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Brown.**

**The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Blaisdell, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, K. Wheeler, Klemm, Hollingworth, Cohen.**

**The following Senators voted No: Disnard, Roberge, Fernald.**

**Yeas: 21 - Nays: 3**

**Adopted.**

**Referred to the Finance Committee (Rule #24).**

**SB 12-FN-A, relative to the World War II memorial campaign and making an appropriation therefor. Public Affairs Committee. Vote 6-0. Ought to Pass, Senator McCarley for the committee.**

SENATOR MCCARLEY: Senate Bill 12 would add New Hampshire's support to the building of a monument honoring the veterans of World War II. Of the 60,000 New Hampshire veterans who served in this war, approximately 30,000 still live in the state. No national monument hon-

oring the World War II veterans has been constructed. This bill appropriates \$1.00 for each New Hampshire citizen who served, for a total appropriation of \$60,000 in fiscal year 2000. The proposed monument would be on the National Mall in Washington, D.C. The Public Affairs Committee voted unanimously that this bill ought to pass. I would like to speak to my motion, now. I believe that it is right and fitting that we as a state contribute to this memorial. In doing so, we collectively honor those who served and show some small measure of our gratitude for their service. New Hampshire should do its part in the national collective effort to honor those that served and sacrificed. But I further believe that it is the many individual stories of service that each of us knows that completely convinced us that they deserve this honor. Taken together, these stories make up the rich fabric of our history and I would like to have a chance to share a couple of these stories that I know. I think of my father-in-law, Ralph Harkinson, a draftee serving in the infantry. He landed in France on December 9, 1944 and was assigned to the 35<sup>th</sup> infantry division. He was severely injured by shrapnel less than a month later during the battle of the bulge. His combat was relatively brief by some measure but all too long by any human measure. That type of service deserves to be honored. Fred Hall, now of Rochester who fought in Africa and Sicily then landed in Normandy before seven in the morning on June 6 and served in Europe until the Germans surrendered. Dick Lachance, also now of Rochester, who had the unenviable job of clearing land mines. The service of our men and women in World War II in whatever branch of the armed forces represents America at its best. It deserves to be honored with this memorial and New Hampshire should proudly contribute to the effort. Thank you.

SENATOR FRASER: My colleagues in the Senate, I didn't know that Senator Cohen had introduced this bill otherwise I would have been more than proud to cosponsor it. I am a charter member of the Memorial Building Fund that has been ongoing now for almost two years. I would hope that everyone in this chamber would support the motion by Senator McCarley. Thank you very much.

SENATOR TROMBLY: Mr. President and members of the Senate, I wish to tell you that when we had this committee hearing, we received some very emotional and important testimony. It was the unanimous vote of the Public Affairs Committee to send a resolution to Congress. The basis of the resolution is this, we learned during the committee hearing that the memorial construction cannot begin under federal law until all of the money is raised for this memorial. We felt that given the passage of time, the importance of the memorial, that the memorial construction should begin immediately because clearly it is a worthwhile cause and it is going to take a certain amount of time to raise the money and then build it. Most certainly, if you are going to have a memorial you should have it around for those men and women who fought, for many to enjoy and to be honored by that. There is a resolution being drafted in Legislative Services, which will be sponsored entirely by the Public Affairs Committee. Given, however, I think the import and the need for such a resolution, the resolution will call on Congress, by the way, to begin construction immediately and to remove that restriction from the law. I plan on going down to Legislative Services and leaving that resolution open for as many Senators who wish to sign onto that as possible. I think that if we can make that statement for our constituents then it is a tribute long denied, but well worth making.

**Adopted.**

**Referred to the Finance Committee (Rule #24).**

**SB 38**, relative to the optional term for election of a cooperative school district moderator. Public Affairs Committee. Vote 6-0. Ought to Pass, Senator Roberge for the committee.

**SENATOR ROBERGE:** Senate Bill 38 seeks to bring some uniformity to the length of time a moderator in a cooperative school district serves. Currently the length is one year. For moderators who serve both towns and school districts, every year is an election year. This also means that school district moderators cannot supervise the polls on the years that they are running — which is every year. This legislation would leave it up to the district to determine the length of time for moderators to serve. Testimony was presented at the hearing that the secretary of state felt that the statute was in error and that the intent had been to have the terms for moderators the same. The Public Affairs Committee voted unanimously that SB 38 ought to pass. I ask the Senate to support this legislation.

**Adopted.**

**Ordered to third reading.**

**SB 39**, eliminating the voting column for vice-president on the presidential primary ballot. Public Affairs Committee.

**MINORITY REPORT:** Inexpedient to Legislate, Senator Krueger for the committee. Vote 2-4

**MAJORITY REPORT:** Ought to Pass, Senator McCarley for the committee. Vote 4-2

**SENATOR KRUEGER:** Senate Bill 39 brings into a question a unique feature of New Hampshire's "First in the Nation Primary" — that of being able to write in candidates for Vice President. New Hampshire is the only state in the nation which does this. While the votes cast do not count toward placement on the ballot, the process has been used to send a message. The secretary of state's office testified at the hearing that during one election, 22,000 write-in votes were cast for Nixon in an effort to send a message to President Eisenhower. There is no cost to the state to continue this unique feature of the "First in the Nation Primary." With the primary status being attacked at a national level, and I might add, that I served on National Rules Committee and we are always one hair away from losing that, is this any time to risk changing it? I ask the Senate to vote SB 39 inexpedient to legislate. Thank you, Mr. President.

**SENATOR MCCARLEY:** Senate Bill 39 was filed at the request of some ward moderators in Rochester who expressed concern with the amount of time and therefore, actually costs to hand-count the write-in ballots for the Vice President. Since indeed, the write-in ballots have absolutely no meaning, and while it was mentioned that they have had said something about an expression coming from New Hampshire, they indeed...we do not elect a Vice President in this country, so they truly do not have any meanings, but anytime, as we all know, when you go in and vote, you have an entire column which says "write-in" and there are no names, people have a tendency to write-in. So basically, this was a sort of simple approach to take care of something that I have an enormous amount of respect for, a great many New Hampshire traditions. This is one that strikes me as a local headache that actually doesn't mean anything. The Public Affairs Committee voted 4 to 2 that this legislation ought to pass.

**SENATOR DISNARD:** I realize my age is showing. Tradition. We lost the prayer in the schools, many do not salute the flag, many do not recog-



nize Memorial Day, and many do not recognize Armistice Day and now we want to do away with another tradition. I urge our members to vote against this and keep at least one tradition in this state.

SENATOR FRANCOEUR: Senator McCarley, you mentioned that there were costs associated with counting these votes. In my town the workers are paid by the day, are yours paid any different?

SENATOR MCCARLEY: They are normally paid by the day, but there is add-on hours in terms if it goes beyond a certain time, I believe. What happens is there is additional hourly time. Plus, we have found the need to actually have more than...in terms of getting people to commit for the whole day, we end up having to have extra people on which is actually a little bit more expensive and it drags well on in terms of time. We have found that it is sometimes very hard and this is actually after the advent of machines in Rochester. It has been very hard to get people to commit to that link of the day because of what we pay, because the pay quite frankly is somewhat minimal. So we have actually had the situation of finding it a hard time to get people to cover. Obviously a lot of people do vote at this primary. It is a big voting night.

SENATOR FRANCOEUR: I know during counting a lot of times in our town, there are a lot of certain individuals, myself, I have been there when I haven't been on the ballot and I have helped them count. Does Rochester also do that so that they don't have to have full time people that are paid?

SENATOR MCCARLEY: We certainly try to do that. What we try to do the process of Election Day as cheaply as I am sure every city and town does, but also to do it well.

SENATOR BROWN: I am curious, was this overwhelming? Were there a lot of towns that were experiencing what you just described?

SENATOR MCCARLEY: I literally brought this in at the request of a constituent ward moderator in Rochester. I would not comment across the state where the issue is.

SENATOR SQUIRES: I am a moderator also, Mr. President, for the school district and for the town. We are really cheap, we don't pay anybody anything. But nevertheless, I have counted votes for Donald Duck and all sorts of weird write-ins. But I don't think that it is a problem. We count all of our votes by hand. We do not have voting machines. I think to do away with the tradition solely for the convenience of the moderator is something that I would not support, hence, I will support the minority opinion.

SENATOR BROWN: I would like to echo my support of keeping this tradition. I really think what Senator Disnard said and the others, is compelling and I would urge my colleagues to support Senator Krueger.

SENATOR FERNALD: Senator Disnard, in deference to your age, I would ask you this question because I do not know the answer? This is a tradition. Why do we do it? Why do we do this?

SENATOR DISNARD: Why do we do this? Why are we first in the nation?

SENATOR FERNALD: No, no. Why do we vote for Vice President in the primary?

SENATOR DISNARD: To show the people in this country and in this state that we are the first in the nation and we started the vice presidency vote on the ballot and we are going to stick with it.

SENATOR FERNALD: Have we ever had any nominations?

SENATOR DISNARD: Yes. Chuck Peabody from this state.

SENATOR FERNALD: I guess that I am trying to figure out what purpose does this serve, this tradition of ours? Is it a tradition without purpose?

SENATOR DISNARD: Well sir, what purpose did recognizing President Washington's birthday, what purpose did it do to recognize Lincoln's birthday, which hardly anyone recognizes especially school districts, what purpose does it do to recognize a Memorial tradition where families used to go to the cemeteries and honor the honored soldiers? I could go back on and on. What good are those?

SENATOR FERNALD: With all due respect, Senator, I don't think that you answered my question. What is the purpose of this tradition?

SENATOR DISNARD: What is the purpose? Good tradition, recognizing our state's tradition and being proud of it. Once again, calling attention to the fact that we involve the people in our elections.

SENATOR FERNALD: But don't we do a primary to register our vote, to send a message to the country? What message are we sending when there is nobody on the ballot?

SENATOR DISNARD: What message are we sending? That the ordinary voter has an opportunity to list his or her choice for vice president. That is the choice. That is the message to the rest of the country.

SENATOR FERNALD: And in your experience, when people are writing in, does it ever really get reported other than the one instance that you mentioned of Chuck Peabody? No, he was a candidate.

SENATOR DISNARD: Yes it is reported and it gets national publicity. The state gets national publicity, but I, as a voter, or my neighbor who probably does not get recognized many times for doing anything, has the opportunity to go in and exercise his or her vote.

SENATOR FERNALD: We get publicity for the presidential results. I don't understand the vice president's results.

SENATOR J. KING: I cosponsored the bill. I like my ballots simple, right to the point and no added things that shouldn't be stated. We have more difficulties and recounts in not only those areas, but also less on the ballot and you should only have what they are voting on and as clear as a bell. That is the reason why I put my name on that. I love tradition, but I don't know if tradition should be on the ballot.

SENATOR F. KING: Senator King, I guess my question is, would you be in favor of not allowing any write-ins, would that make it more simple?

SENATOR J. KING: No, but in this case, it doesn't make any difference how many names are written in, it doesn't do anything. You don't get any offers. In a write-in you could probably win on an election that is on that ballot, but that doesn't happen with the vice presidency.

SENATOR F. KING: I wasn't sure if you wanted to deny all write-ins that is all.

SENATOR J. KING: Oh, no, no, no.

SENATOR FRASER: Senator Krueger, didn't the secretary of state's office appear at the hearings?

SENATOR KRUEGER: Thank you, yes, they did, Senator Fraser. They spoke very strongly in support of leaving the ballot the way that it was

for the reasons that have already been identified. They felt that it was the people's say again, they felt that there were messages that do come out of these interesting vice presidential choices and they sometimes are very interesting. But more importantly, I think that the secretary of state's office involved in all of the secretary's of states in the United States came back from those meetings saying what makes New Hampshire unique is all that we really have. I would encourage this body to vote with the minority.

SENATOR GORDON: I also serve as the town moderator and a school district moderator. I wasn't sure that I really liked the idea of extending the terms of moderators, frankly. But this has never been raised as an issue in Bristol or certainly as long as I have been a moderator in the town and it has been some time. It has never been raised as an issue. I certainly will keep my ears open in this next primary to see whether or not it is a concern. As I look at it, there are two issues here. One is the convenience of election officials and the other one is giving constituents an opportunity to express their intent. I guess if I have to look at the two issues and balance them, I would say that I would rather give my constituents an opportunity to express their intent.

SENATOR BELOW: Senator McCarley, would the expectation be if this bill passed, it would speed up the returns on the presidential primary?

SENATOR MCCARLEY: I think that it would undoubtedly speed up the returns. Again, I am talking...with hand counted towns — I can't speak too. I am talking about our cities and many of our larger towns that now use machines. There is no question that the process is longer by virtue by the inability to pass up the write-in opportunity for something which, while has tradition, means nothing.

SENATOR FERNALD: We adopted our primary, first in the nation to send a message to the country and it has worked beautifully. We send our message and the message is received from coast-to-coast. But we also have vice presidential primary, which has no meaning, sends no message. No one pays attention to what we do on that ballot. Think back over the history of the primary and you can think of the great headlines, "Clinton comes in second, he is the come back kid." "Buchanan wins", "Muskie doesn't win by enough" and so on and so forth. What are the noteworthy moments of the New Hampshire Vice Presidential Primary? I don't think that there are any, it is a tradition without any purpose. I agree with Senator J. King to keep it simple and go there and vote on what we are going to vote for and not put ballot people through a lot of work. As I understand it, any ballot that has a write-in gets kicked out by a voting machine and has to be hand counted. So with those towns with machines, they lose the value of the machine because you have this ballot with this blank and people want to put some name in it as Senator Squires mentioned, he gets Mickey Mouse and Donald Duck and everything else. Thank you.

SENATOR RUSSMAN: I, too, have been a moderator for over 30 years and the last thing that I think that we ought to do is disenfranchise people in any way at all. So when in doubt, I think we ought to vote no and I think that we ought to support the inexpedient motion.

SENATOR TROMBLY: Senator Fernald, would you believe that the secretary of state's office testified that other than Chubb Peabody the only person ever to file for this office was David Duke, would you agree with me?

SENATOR FERNALD: I will take your information at face value.



SENATOR TROMBLY: Do you believe that it was the intent of the republican voters to endorse the candidacy of the likes of one David Duke for vice president of the United States?

SENATOR FERNALD: I am sure that it was not.

**Question is on the majority report of ought to pass.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Brown.**

**The following Senators voted Yes: Below, McCarley, Trombly, Blaisdell, Fernald, J. King, K. Wheeler, Cohen.**

**The following Senators voted No: F. King, Gordon, Johnson, Fraser, Disnard, Roberge, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, Russman, D'Allesandro, Klemm, Hollingworth.**

**Yeas: 8 - Nays: 16**

**Motion failed.**

**Question is on the minority report of inexpedient to legislate.**

**Adopted.**

**Committee report of inexpedient to legislate is adopted.**

**SB 14**, establishing a committee to study the financial impact of federal welfare reform on the cities and towns of New Hampshire. Public Institutions, Health and Human Services Committee. Vote 7-0. Ought to pass with amendment, Senator McCarley for the committee.

**1999-0200s**

**05/09**

### **Amendment to SB 14**

Amend the title of the bill by replacing it with the following:

**AN ACT** establishing a committee to study the impact of federal welfare reform on the cities and towns of New Hampshire.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is hereby established a committee to study the impact of federal welfare reform on the cities and towns of New Hampshire.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Five members of the senate, appointed by the president of the senate.

(b) Five members of the house of representatives, at least 3 of whom shall be members of the house health, human services and elderly affairs committee and the house municipal and county government committee, appointed by the speaker of the house of representatives.

II. Members of the committee shall be selected to represent large and small communities from different geographic areas of the state.

III. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study the impact of federal welfare reform. The committee's study shall include, but not be limited to, RSA 165, relative to aid to assisted persons; RSA 167, relative to public assistance

to blind, aged, or disabled persons and to dependent children; and any other relevant issues that may arise in the course of the committee's deliberations. Specifically, the committee shall:

I. Project the future financial and other impacts of welfare reform on the 234 towns and cities in the state.

II. Analyze the anticipated financial impact on communities of the policy of terminating state welfare benefits after 60 months of state support and the impact of the relocation of clients from neighboring states to New Hampshire due to its longer benefits period.

III. Identify the federal welfare reform options available to New Hampshire, and to our state department of health and human services, that would minimize the financial impact of welfare reform on New Hampshire municipalities.

IV. Based on the information determined, suggest policy alternatives to deal with identified unfavorable or undesirable impacts upon communities.

4 Information and Resources. The committee shall seek input from the department of health and human services, which shall make available staff and such information as may be required. The committee shall also seek input from other knowledgeable sources, including but not limited to:

I. The New Hampshire Local Welfare Administrators Association.

II. The department of employment security.

III. New Hampshire Legal Assistance.

IV. The New Hampshire Municipal Association.

5 Chairperson; Meetings. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Six members of the committee shall constitute a quorum.

6 Report. The committee shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 1999.

7 Effective Date. This act shall take effect upon its passage.

**1999-0200s**

### AMENDED ANALYSIS

This bill establishes a committee to study the impact of federal welfare reform on the cities and towns of New Hampshire.

SENATOR MCCARLEY: I am sure that you are all appreciative of the discussion that we have had previous. No problem. I can see what I can do next year if we can have another discussion on another bill. I rise in support of SB 14. Since the passage of welfare reform by the federal government, there has been much discussion about the effectiveness of various welfare reform measures and impacts on both the recipients and the government. New Hampshire has a two-tiered welfare system. With the federally supported programs operated on the state level and the general assistance programs operated at the local level. The division of these responsibilities between state and the local government can make it more difficult to access the overall effect of programs and increases the importance of working cooperatively. The study committee established by SB 14 is an important first step in identifying the local effects of welfare reform measures. Until this information is accessed, it is difficult to know if a problem exists or the best way to approach a solution.

This study committee also provides us with an opportunity to look at other federal welfare options available to the state of New Hampshire. I urge your passage of SB 14.

SENATOR F. KING: I think that this is a worthwhile bill, but I think that it needs to be amended. There is no reference to the counties being involved in this process. I would point out that we spent many, many hours last year on SB 409, which dealt with issues such as this. I think that if we are going to study the impact on cities and towns we certainly need to include counties as part of the process. I would suggest that the bill be tabled until that can be added.

SENATOR MCCARLEY: I certainly don't disagree, I guess that if I may, I would like to defer to the prime sponsor on the bill in terms of a comment on that, because it does specifically includes cities and towns and does not include counties in it. I don't fundamentally disagree with Senator King's suggestion.

SENATOR D'ALLESANDRO: Thank you, Senator McCarley. I do not have any problem with addressing the situation of adding the counties, Senator King. I think that the situation though becomes critical in that the court of last resort in welfare is the local municipality, because under our law they have to assume the burden. The quicker that we can get the study together to evaluate the impact of federal welfare reform and look at the number of programs that are available on the federal level, that will aid us in this transition. I think that it is imperative that the situation begins to really come to fruition in the year 2000 and 2001 and we have to be prepared for that. Currently as the situation has been evolving and welfare rolls have been declining at the state level and at the county level, many times those cases are appearing at the local level. I have no problem with what you are asking for, but I think that we have to work expeditiously to move this through so that we can begin to study something and get it back by the end of the calendar year.

Senator F. King moved to have **SB 14**, establishing a committee to study the financial impact of federal welfare reform on the cities and towns of New Hampshire, laid on the table.

**Adopted.**

### **LAI D ON THE TABLE**

**SB 14**, establishing a committee to study the financial impact of federal welfare reform on the cities and towns of New Hampshire.

**SB 19**, extending the reporting date of the state substance abuse treatment delivery system committee. Public Institutions, Health and Human Services Committee. Vote 6-0. Ought to pass with amendment, Senator Wheeler for the committee.

**1999-0164s**

**01/09**

### **Amendment to SB 19**

Amend the bill by replacing section one with the following:

1 Reporting Date Extended; Interim Report. Amend 1998, 247:5 to read as follows:

247:5 ~~[Report]~~ **Reports**. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of



representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, [1998] 2000, *provided that the committee shall make an interim report on or before November 1, 1999.*

1999-0164s

#### AMENDED ANALYSIS

This bill extends the reporting date of the state substance abuse treatment delivery system committee to November 1, 2000. The bill requires the committee to make an interim report on or before November 1, 1999.

SENATOR WHEELER: I rise in support of SB 19. This bill will continue the work that was started last year by HB 1174 a study committee to reveal how the state delivers substance abuse services. The charge to the committee is to review and assess the delivery treatment system and more specifically, to identify needs within the system that are currently not being addressed and to find out more about ways to strengthen the system already in place. We heard that the current treatment services in New Hampshire lack a continuum of care and do not meet the needs of women, families and children. We heard of barriers to treatments and suggestions for action including discussing a parity for health insurance coverage for alcohol and other treatment services, developing a holistic integrated approach to the treatment of substance abuse, medicaid reimbursement for some types of treatment especially for adolescents and seniors. We heard about legislating outcome based treatment and revising the involuntarily admission law. Because of the scope of this issue and its importance to the state, not only for public health reasons but also for its impact on our economy and on the criminal justice system. The committee is proposing legislation to allow it to continue its work for two more years in order to address some of the issues that are outlined here. The committee further recommended that the bill should have an amendment requiring an additional interim report to be presented by the State Substance Abuse Treatment Delivery System Committee on or before November 1, 1999 in addition to its final report in the year 2000. I urge you to pass SB 19 as amended. Thank you.

**Amendment adopted.**

**Ordered to third reading.**

**SB 36-FN-A**, relative to salary increases for care providers for persons with developmental and acquired disabilities and making an appropriation therefor. Public Institutions, Health and Human Services Committee. Vote 4-0. Ought to Pass, Senator Squires for the committee.

SENATOR SQUIRES: I rise in support of and ask your support of Senate Bill 36 for the purposes stated. This bill has its origin 24 years ago when this legislature passed RSA 171-A. In that statute, the legislature required, what was then the Division of Mental Health, "to establish, maintain, implement, and coordinate a system of service, a delivery system" which grew into the area agency system that we know today. The key word in that phrase is "maintain." In 1978, a class action suit was brought by a New Hampshire citizen that challenged the government of New Hampshire to correct the conditions that were then existing in the Laconia school. Thirteen years later, the school finally closed. As a result, we now have the area agency system which is the envy of the other 49 states. The issue that today's bill highlights is the fact that since 1994 there has been no increase in public support for direct service providers. At present, there are approximately 1,595 employees in

this system. They earn an average hourly rate of \$7.54, which translates into \$15,683 per year making it difficult to recruit and then maintain employees to do this most demanding service. We cannot argue, we cannot defend, we can assert that we are fulfilling our responsibility to maintain this system without raising salaries to a more reasonable level; however, I would like to remind you that the costs of this bill, SB 36 has shared an equal proportion by the federal government through the medicaid program. The present salary system is such that one of my constituents, my former constituent, who has been doing this work, had to live in Nashua because he couldn't earn enough to live there. Nashua has thus lost a dedicated person, but more importantly, the people that he was taking care of have lost somebody that they have become accustomed to. So once again, we have an example of the government beginning a program, which over time is not funded to the extent that is required to fulfill its initial promise. The Public Institutions, Health and Human Services Committee voted that this bill ought to pass. I realize that this bill will now go to the Finance Committee, and I trust that they will give it the care and attention that it deserves. Thank you.

SENATOR GORDON: I rise to speak very briefly, Mr. President. I don't think that there has been any other bill, which I feel quite so strongly about as this one. The fact is that we sat on a study committee chaired by Senator Larsen this summer. We were presented with testimony in regard to parents who find themselves in such desperate circumstances through no fault of their own. Having children who have developmental disabilities and in essence what happens is that they dedicate the remainder of their lives in order to care for this child or this person. Some of that testimony would tell you that these people, for periods of ten years, a husband or wife would have no opportunity really to go out and eat together because of the necessity of having one person home to care for a child. The only respite that many of these people have is the fact that there are people who are willing to provide the type of services that this will fund. People who are willing to come into the home and provide services to individuals with developmental disabilities. The fact is, that we pay those people right now, \$7.54 an hour. The fact is that many of these people can go to McDonalds and earn more money at McDonalds than they can earn giving this type of care. So to raise that up to \$8.67 an hour seems very appropriate. I know that this is going to Finance, but I hope that we will dispose of this bill quickly and that we will get it back and pass it on. This is tremendous investment because if the state has the obligation of caring and providing the same type of care that is being received in the home; the costs to the state will be substantially greater than what we are seeing in this bill. We voted last week to appropriate \$966,000,000 with no assurances or guarantee that in essence we are going to provide and direct improvement from that. Here is an opportunity for us to invest \$2 million and we know that we are going to see a return. I would appreciate your support.

**Adopted.**

**Referred to the Finance Committee (Rule #24).**

**SB 118**, relative to requirements for retail installment contracts for motor vehicle sales. Transportation Committee. Vote 5-0. Ought to Pass, Senator Trombly for the committee.

SENATOR TROMBLY: Senate Bill 118 will essentially allow people who want to buy a new vehicle, who have a negative equity in their old vehicle, to trade in and purchase that new vehicle and finance the remain-

ing balance on their old vehicle in their new contract. The United Auto Dealers Association supported the bill. I believe that Senator Fraser will back me up on this that the banking **TAPE CHANGE** we are hopeful that this will allow people that have vehicles, while they owe more than the value of their vehicle, allow them to trade up and particularly if they are having problems with their old vehicle and are spending a lot on maintenance, they can get out of their old car and into their new car and be able to finance the remaining balance on their old vehicle. Thank you very much, Mr. President.

SENATOR JOHNSON: Does this address the issue of leasing?

SENATOR TROMBLY: I believe leasing is already covered. But it is covered, yes.

**Adopted.**

**Ordered to third reading.**

**HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products. Ways and Means Committee. Vote 5-2. Ought to pass with amendment, Senator F. King for the committee.

**1999-0261s**

**09/03**

#### **Amendment to HB 112-FN-A**

Amend the title of the bill by replacing it with the following:

AN ACT increasing the tobacco tax.

Amend the bill by replacing all after the enacting clause with the following:

1 Cigarette Tax. Amend RSA 78:7 to read as follows:

78:7 Tax Imposed. A tax upon the retail consumer is hereby imposed at the rate of [37] **62** cents for each package containing 20 cigarettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes, on all tobacco products sold at retail in this state. The payment of the tax shall be evidenced by affixing stamps to the smallest packages containing the tobacco products in which such products usually are sold at retail. The word "package" as used in this section shall not include individual cigarettes. No tax is imposed on any transactions, the taxation of which by this state is prohibited by the Constitution of the United States.

2 Applicability. This act shall apply to all persons licensed under RSA 78:2. Such persons shall inventory all taxable tobacco products in their possession and file a report of such inventory with the department of revenue administration on a form prescribed by the commissioner within 20 days after the effective date of this act. The tax rate effective April 1, 1999, shall apply to such inventory and the difference, if any, in the amount paid previously on such inventory and the current effective rate of tax shall be paid with the inventory form. The inventory form shall be treated as a tax return for the purpose of computing penalties under RSA 21-J.

3 Effective Date. This act shall take effect April 1, 1999.

**1999-0261s**

#### **AMENDED ANALYSIS**

This bill increases the tobacco tax by 25 cents.

SENATOR F. KING: House Bill 112 is the only House Bill, money bill in the possession of the Senate at this time. This is an important fact



as the Senate moves forward to finalize an educational plan designed to bring closure to the Claremont lawsuit. If the House fails to act today, this bill may become very important. At the four-hour hearing that we had before the joint Ways and Means and Finance Committees, 20 persons testified against part or all of this legislation. Three were in support and one had no position. As a result of the extensive testimony, the Ways and Means Committee voted to amend the bill to remove all references to cigar and pipe tobacco; in essence, the definition of tobacco products remains as it is in the current statute. The vote was five in favor of the amended bill and two opposed. I voted with the majority to pass this legislation so that it can go to the Finance Committee where further amendments can be discussed and more importantly at this time, it may become the one bill which the Senate can use to prepare its education plan if the House, as I said, fails to act today. I, personally feel that an increase in this tax at this time, would be the wrong decision; however, I also remain concerned that our business taxes are showing signs of possible economic slowdown. Through the end of February, receipts are 9 percent below projection for business taxes with the largest two months, March and April yet to be heard from. We must be very careful of how we deal with our present sources of revenue and for our potential sources for increased revenue. We need to keep this bill and we need to keep it alive and it should not be voted down today. Thank you.

SENATOR FRASER: Mr. President, I was one of the two votes along with my colleague Senator Brown, we opposed this bill, even though the major part of the bill was eliminating from the bill, the cigar smokers. The reason that I opposed it was because all of the testimony that we heard, everyone including the American Lung Association, the American Cancer Society, they said that the incidents of smoking by youths continues to increase and yet the effort as I understood it from the members of the committee, was to increase the cigarette tax because they, for some reason, believe that is going to inhibit these kids from smoking. I don't believe that and as a matter of fact, if you believe that I might have a bridge down in Brooklyn that you might want to buy. It is just not going to happen that way. I think that Senator Squires' idea for education bears a great deal of merit, but more important to me, is the fact that I think that this is an anti-business bill. The people...I had the privilege of breaking bread with, which were four members from the Vermont Delegation last Saturday evening, and they really are hoping that we pass this bill because suddenly the people that have been coming across to our border into New Hampshire from Vermont are going to stay home and buy their products in Vermont rather than to buy our products here in New Hampshire. It is just not the cigarette tax, I think that we all understand that. We have these folks that come across from New York, Maine, Massachusetts and from Vermont, they come across our borders to purchase not only cigarettes, but once we get them here, we are very successful in selling them other services and goods. So I am going to vote against this bill today. I understand Senator King and I understand the effort of some of the members of the Ways and Means Committee that this might be the only vehicle that is going to be alive in order to address Claremont II. My concern is, that if we get a bill from the House, a clean bill, we are going to end up with a 25-cent tax on cigarettes, an increase tax on cigarettes, which I think is going to hurt our merchants along the border terribly. So I would hope that you would support me and oppose this bill.

SENATOR DISNARD: I support the previous speaker very strongly. I really feel the obligation to speak against this bill. As you know, I repre-

sent districts on the Connecticut River as well as others that represent districts on the Connecticut River...and I may be repeating some of the things that Senator Fraser has said, but I apologize, but I want to say them anyway. It is amazing the small number of stores along the Connecticut River that employ family members and other part timers for income. Their income depends upon the sale of cigarettes. If this passes, and it is my understanding that the price of cigarettes in this state will be higher than those in Vermont. People come over from Vermont to go to Wal Mart and they spend money. They also go to the small stores to get their cigarettes and they buy many other things. They probably spend four or five dollars more than they spend on the cigarettes. I urge your people to think of these mom and pop stores. I also realize that people are voting for this because they think that it is a health situation, but I also realize that most of the people, or many of the people who buy cigarettes, are of lower income. Let us let them enjoy their cigarettes too. Thank you.

SENATOR HOLLINGWORTH: I would like to remind the body that we did hear from Stan Arnold who assured us that we will continue to be competitive and we will still receive the returns coming to the state. He has been on target every single time that we have increased taxes and I would trust that we continue to have faith in his projections. Nationally the statistics have proven that any increase in cigarettes does decrease the number of people smoking and while the number of young people in New Hampshire happens to be increasing, unfortunately, it happens to be young teenage women who are the ones that are turning to smoking cigarettes. We do know that it has the biggest impact on those with small incomes. So if the price of cigarettes does go up, we know from statistics nationwide that it will bring down some of those children...it will prevent some of those children from smoking.

SENATOR SQUIRES: I also represent a border district, in fact, one of the people who testified at the hearing was from the town of Brookline. I look at this differently, somewhat longer term. I don't think that there is any question that the passage of this bill may have an impact on border communities. I will also assert to you that I will bet that every one of those stores has a problem getting access to health insurance. The reason that they have a problem getting access to health insurance is because it is too expensive and one of the reasons that health insurance is so expensive is because of the consumption of cigarettes. Now the problem with this bill that I have is, that it is true as previous said, that the link between per pack cost and consumption is tenuous. It probably does exist in fact, but what is not tenuous and which more than one speaker testified to, is the fact that, if you combine an increase in cost with an education program, you will, in fact, reduce the consumption of cigarettes, particularly among younger people. When this bill gets to the Finance Committee, I intend to discuss with the members of that committee, and I hope eventually with all of you, an amendment which says that some of these funds will be committed to tobacco cessation programs of which there are many, including those proposed by the CDC, by neighboring states and so on. If we don't do that, all of the statements that you have heard are true. We are just looking at a tax for us to throw into the general fund and that is wrong. But I urge us to consider a portion of these funds to be used for the specific purpose of tobacco prevention and cessation. Thank you.

SENATOR FERNALD: I support the idea of a cigarette tax and I am going to vote for this bill; however, I am not convinced that 25 cents is the right number. I appreciate the comments of Senator Disnard regard-

ing the fact that he represents border towns. I suppose that this is a small state and most of us are on the border, but at any rate, it is an important issue and it always has been in setting our cigarette tax rate. I don't take this yes vote as a final word on 25 cents at least on my part. I think that we need to remain competitive with Vermont because it is going to affect our revenue overall from the cigarette tax and we don't want to end up shooting ourselves in the foot by going too high. I also agree with Senator Fred King that this is our vehicle to move forward potentially on the Claremont II solution, so I will vote yes to send this to Finance, but reserve judgement on the actual per cent per pack increase. Thank you.

SENATOR LARSEN: I would just add my support of the importance of sending this to Finance whether or not you agree with the tobacco price increase. It is important that we have a vehicle in Finance, as we do not know the outcome of the House vote today. Clearly, there is a price sensitive issue with the youngest children beginning smoking and if you increase tobacco prices you can, in fact, and we are told astonishingly that nine and 13 year olds are those who are most likely to begin smoking, they are also the most price sensitive. Those kinds of issues can be resolved in Finance. Depending if we rely upon tobacco for Claremont funding, we can adjust the rate of tobacco taxation but we do need to get it into Finance, that is your vote today and I think that you all need to keep that in mind. Thank you.

SENATOR RUSSMAN: I would rise in support of the motion to pass this bill. I think the idea of amending it in Finance to have the educational component is very, very important. For me, I have supported cigarette taxes in the past even though I represent a border area. The fact that it is essentially just killing my constituents and killing other people is reason enough for me to support it.

SENATOR JOHNSON: It will also have an impact on my district, the border of Maine, a rather major increase. I would just like to mention that and I do not think that it has been mentioned, that right now, the Vermont tax is 44 cents, Connecticut is 50 cents and New York is 56 cents, Rhode Island is 71 cents, Maine is 74 cents and Massachusetts is 76. Now our proposal is 62 cents. Now if you think about that, many of the stores that I have visited in my district look at it this way, they look at it as really greed by the state of New Hampshire. We are now collecting \$3.70 a carton on cigarettes and we are going to propose another \$2.50 a carton, bringing the state tax to \$6.20 per carton. Now these people are selling this product and trying to make a living and are hiring employees who are also trying to make a living. Their average profit on a carton of cigarettes is \$1.20 to \$1.23. So I have seen a lot of outrage that I haven't seen before. There was some in the last increase that we had with the 12 cents, but I can tell you that there is a lot of outrage out there now with these people because of this proposal. So having said that, I am going to vote against this tax.

SENATOR GORDON: I think that everybody knows from past years, that I am not opposed to increasing the tax on cigarettes. I proposed that three years ago when we wanted to use it for funding kindergarten and then supported cigarette tax increase two-years ago when we actually used that money to balance our budgets. So I think that an increase in the cigarette tax, if it is necessary and appropriate, is something that I can support. I don't necessarily view this the way other people do in terms of effect on business, although I think that has to be a concern. I



think that we would want to make that increase as modest as possible, if in fact, it is necessary. My concern that I address here today is that this is putting the cart before the horse. I find myself at odds today with Senator Fred King because we are ordinarily allies on most issues, but it seems to me that we are voting today as a matter of policy to have a cigarette tax be 25 cents and then to send it off to Finance. The reason that we are told that we need to do that is because we need to have a vehicle in the Senate. Well, I think that if that is the case, we can have a vehicle in the Senate by simply putting this bill on the table and then we will have a vehicle in the Senate to use. I don't understand why we have to pass a bill as a matter of policy of 25 cents to the Finance Committee to have a vehicle. I believe that we have the vehicle and let's put it on the table and it is there to use. I thought that the Senate used very wise judgement two years ago when those members on the Finance Committee, balancing the budget two years ago when we balanced the budget, because what we did was we increased the cigarette tax as much as we needed to in order to meet our financial needs, or what we believed would be our financial needs at the time. What I would like us to do if we are going to have to increase the cigarette tax is make a determination of what those financial needs are. No one at this point in time has been able to tell me how this cigarette tax revenue is going to be used. I heard some discussion today that it may be used for education. Maybe it is going to be used in the budget. If it were my preference and we were going to increase the cigarette tax, I would use the money to help fund the university system or a technical college system or maybe I would use that money to help support the new prison in Berlin, but I think that there ought to be some kind of need or determination when we do the full budget, as to how much money that we need and then at that point in time, make a determination of how much money we are going to have to raise, if any, in the tobacco tax. Today, I think we are putting the cart before the horse. We are passing a tax before we know how the money is going to be used. Why do you do that? Does it make any sense for a business person to say we are simply going to spend money and then figure out why later? I don't think so. So I am going to oppose it today with the caveat that I am not necessarily opposed to a tobacco tax, but I am going to oppose it today on the caveat that, as a matter of policy, I think that we ought to decide what our needs are first and then how to fund it later.

SENATOR HOLLINGWORTH: Senator Gordon, I understand your desire to understand what is going to happen, but when you suggested tabling, I asked our Senate Clerk if it is possible for us to work on the piece of legislation, to amend the piece of legislation or to hold public hearings on the piece of legislation if it is sitting on the table in this chamber, and she told me that it is not. I think that is one of the reasons that we clearly want to make some changes to the pieces of legislation. We talked to Senator Squires and asked him to put together an amendment that he would bring before Finance and in fact, as soon as we pass this piece of legislation, it will be in the Senate Calendar and we will be holding hearings on this as soon as possible that we can get it into the schedule, because we do believe that there are some changes that will be made to this legislation. I would ask you to please let the legislation go forward so that we can address those concerns and those problems, whether it is 25 cents or whether it is some other number, we would like to be able to look at that and come back to you with a more informed piece of legislation.

SENATOR GORDON: I think that I missed the question.

SENATOR HOLLINGWORTH: Well, the question is, are you aware of the fact that we cannot act on the legislation if it is on the table?

SENATOR GORDON: I guess the answer to that is that I don't think anything precludes us from putting together proposals and having them available and then when we need the bill for some purpose, to bring it forward to use it. I don't think that necessarily passing it into Finance is the only way that we can make that happen, Senator Hollingworth.

SENATOR GORDON: Senator Fred King, if in fact we should not get a vehicle that came over from the House today, and we should decide that it was in the best interest to move this bill forward as a vehicle, rather than send a message to the business people of the state that we are going to have a 25 cent tax, would it be possible to amend it at that point in time for a lower amount like a penny tax in order to just move it forward?

SENATOR F. KING: Gee, I am surprised that you are asking me that question. I would assume so. I guess, yes, you could do that, sure.

**Recess.**

**Out of Recess.**

SENATOR BELOW: I rise in support of passing the bill onto the Senate Finance Committee at this point. I do want to indicate my concurrence with the remarks of Senator Squires, Russman and Fernald. I think that it should be understood that this is not a definitive position on the rate or how the money will be used. The way the bill is in its present form, it would simply be for the general fund. But I think that the question about what the rate should be? How it should be used? Those are questions that are appropriate to put into the Senate Finance Committee. If this if for instance, to be a vehicle to address Claremont II if the House fails to pass this and the other money bill, revenue bill today, then it needs to be in the Senate Finance Committee for integration with SB 49 the distribution formula, a revenue formula and the bill will come back to the floor of the Senate for amendment or debate on what the rate should be and how it should be used. If we get another vehicle then it is also appropriate that this bill be in Senate Finance for consideration in how it should fit in with the overall budget for other purposes, potentially. Finally, I do want to say that a number of members of the Ways and Means Committee did feel that we were very interested in Senator Squires' proposed amendment, but it just wasn't developed to the point and he proposed to offer it in the Senate Finance Committee. In terms of the policy, there is an amendment being offered on this that does address the question of taking the cigars out because of the fact that the cigars aren't subject to regulation at the federal level between states. If we were to tax the cigars, we would simply lose the business because it would go to the mail order and internet trade that is not subject to the tax. Thank you.

SENATOR COHEN: I don't want to deal with the vehicle question here, Senator Gordon asked why we were doing this aside from having it as a vehicle? As a policy...to me, this is easy, it makes good sense. It appears to me that there is more border of New Hampshire than there is interior judging from people speaking today. I certainly live on a border town, there are a lot of people in the Portsmouth area who sell to people in Maine. If I thought that this bill was raising our prices higher than

the state of Maine or Massachusetts, I might not vote for it. I probably wouldn't vote for it, but the fact that it raises the price of cigarettes with the intention of keeping it away from kids, from pricing it away from children, like the children who are in the balcony right now, that is the policy question that we are dealing with. To me, this is easy. This is to keep the price high enough to keep kids away from cigarettes and still be lower than our neighboring states. That is what this bill does. We are not raising it higher than the neighboring states, we are still lower than the neighboring states so we are sensitive to the retailers on the border towns. This is a good bill whether or not we need it as a vehicle. I certainly hope that in Finance, we can attach the amendment that Senator Squires addressed.

SENATOR GORDON: Senator Cohen, I am curious about your testimony because you said that if you thought that the price would be higher than Maine that you probably wouldn't vote for it. I think that was your testimony?

SENATOR COHEN: Right.

SENATOR GORDON: Then why would you think that any other Senator here, if we are raising the price higher than Vermont would want to vote for it?

SENATOR COHEN: It is not higher than Vermont, from my understanding it is not.

SENATOR GORDON: Yes it is.

SENATOR HOLLINGWORTH: No, it is not.

SENATOR COHEN: My understanding is that they have a sales tax in the state of Vermont, do they not?

**Recess.**

**Out of Recess.**

SENATOR BROWN: I rise in opposition to increasing the cigarette tax for the following reasons: 1) Adverse affect on the state, general fund revenues - not just cigarette tax revenue, but others - such as Rooms and Meals, Business Profits, and Gasoline Tax. 2) Teenage smoking has actually increased nationally while we've waged war on teens that may view obstacles to smoking as a challenge. How many teen smokers have parents who smoke? Could we more effectively reduce teen smoking with stricter enforcement of existing laws - as is being done in Florida? 3) I object to taxing a legal substance to control personal choices and behaviors. For these reasons, I will vote against this bill.

**Recess.**

**Out of Recess.**

**Amendment adopted.**

Senator Fraser moved to have increasing the tobacco tax and imposing the tax on all types of tobacco products, laid on the table.

**Question is on the tabling motion.**

**A roll call was requested by Senator Hollingworth.**

**Seconded by Senator Below.**

**The following Senators voted Yes: Gordon, Johnson, Fraser, Roberge, Francoeur, Krueger, Brown, Klemm.**



The following Senators voted No: F. King, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Squires, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler, Hollingworth, Cohen.

Yeas: 8 - Nays: 16

Motion failed.

Question is on sending it to Senate Finance (Rule #24).

A roll call was requested by Senator Francoeur.

Seconded by Senator Trombly.

The following Senators voted Yes: F. King, Below, McCarley, Trombly, Blaisdell, Fernald, Squires, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.

The following Senators voted No: Gordon, Johnson, Fraser, Disnard, Roberge, Francoeur, Krueger, Brown.

Yeas: 16 - Nays: 8

Adopted.

Referred to the Finance Committee (Rule #24).

**SB 21**, relative to domestic animals. Wildlife and Recreation Committee. Vote 7-0. Ought to Pass, Senator Wheeler for the committee.

Adopted.

Ordered to third reading.

**TAPE INAUDIBLE**

**SB 37-FN**, relative to fees for testing of domestic animals for disease. Wildlife and Recreation Committee. Vote 8-0. Ought to Pass, Senator Roberge for the committee.

**SENATOR ROBERGE:** Mr. President and members of the Senate, this is another housekeeping bill to clarify the authority of the state veterinarian in the Department of Agriculture. Three veterinary technicians regularly test domestic animals. The department collects fees to meet the costs of the test, but the audit indicated that, despite the intent of the legislature, that the department had no authority to collect fees and the fee schedule did not cover the costs of the test. This bill confers the authority required and ensures that the fees match the cost. I urge passage of SB 37.

Adopted.

Referred to the Finance Committee (Rule #24).

**SB 41**, correcting a reference in provisions relating to hunting and fishing licenses for members of the armed forces. Wildlife and Recreation Committee. Vote 6-0. Ought to Pass, Senator Johnson for the committee.

**SENATOR JOHNSON:** Through the courtesy of Senator Disnard, chairman of the Wildlife and Recreation and Senator Klemm who is a committee member who was originally going to report this bill out today, I have the honor of bringing this bill to the floor today. This is a housekeeping bill to correct a grievous error directed toward a branch of the armed forces near and dear to my heart. The original legislation implied that the members of the Coast Guard were not members of the armed forces. Several Coast Guard veterans took exception and explained that the Coast Guard was in fact a branch of the armed forces even though it was attached to the Department of Transportation. As a veteran of the Coast Guard, World War II, I am pleased to offer this correction on be-

half of all of the men and women who have served in the Coast Guard including former Senator Currier, who is also a veteran of the Coast Guard. Thank you very much, Mr. President.

**Adopted.**

**Ordered to third reading.**

### **SUSPENSION OF THE RULES**

Senator Trombly moved that the Rules of the Senate be so far suspended to dispense with a notice of a committee report in the Senate Calendar.

**SENATOR TROMBLY:** The Public Affairs Committee yesterday, heard testimony on HB 284-L. The problem addressed in this legislation is SB 2, school districts have no recount procedure in the law. A school district, I believe in Senator Klemm's district, had a problem last year in that a recount was requested and there was no procedure available for the recount. The House Bill to which I refer simply says that recounts in those areas will be held in conformance with recounts in town elections. What we would like to do because it is the annual meeting time of the year for school districts, it is a House Bill and it is unamended, a provision has been made with the secretary of state to have this signed and referred, hopefully, to the governor today if we suspend the rules and pass it today so that as these school districts go into their annual meetings this year, if there is a recount requested, they will have the process available to them. I would ask that you concur with the unanimous vote of the Public Affairs Committee, not only to suspend the rules but also to pass this bill.

**Adopted by necessary 2/3 vote.**

**HB 284-L**, relative to recount procedures in school districts. Public Affairs Committee. Vote 3-0. Ought to pass, Senator Krueger for the committee.

**SENATOR TROMBLY:** I would like to reiterate what I said relative to suspension of the rules, Mr. President.

**SENATOR KRUEGER:** House Bill 284 provides that recounts on questions at school district elections shall be handled in the same manner as recounts on questions at town elections. Testimony before the Public Affairs Committee stated that districts adopting SB 2 have no mechanism for handling recounts. House Bill 284 corrects that by adding to statute the same provisions currently used by towns for recounts. In an attempt to possibly have this enacted as soon as possible, Public Affairs Committee had asked that the rules be suspended, which you graciously did and your support of HB 284 is greatly appreciated. Thank you, Mr. President.

**SENATOR D'ALLESANDRO:** I rise in support of the piece of legislation that is before us. It is needed and it just puts a process in place whereby recounts can be done in a manner in which they are currently being done in town elections and they do not have a process in place at the present time. This put a process in place and we answer a need that is present and needs to be resolved immediately. Thank you.

**SENATOR JOHNSON:** Senator D'Allesandro, I am just curious why it came out of committee on a 3 - 0 vote?

**SENATOR TROMBLY:** I can answer that, Senator Johnson. What happened is we got backed up with committee hearings yesterday, Senator Johnson, and by a quirk of fate, and most certainly not by design, the entire Public Affairs Committee is also the entire Wildlife and Rec-

recreation Committee with the exception of Senator Klemm and Senator Krueger. So what happened was that we heard the bill, and there were Wildlife and Recreation bills being heard, and when it became evident that we needed to pass this as quickly as possible, the Senators left in the room were Senators Krueger, Roberge and myself. That was why it was 3 to 0.

**Adopted.**

**Ordered to third reading.**

### **ANNOUNCEMENTS**

SENATOR RUSSMAN (RULE #44): I will be brief. It has come to my attention and I have had a sense to this as we have gone on here, that some of the debate has been less than what it could be, I think, in terms of how we have debated some of the issues. As I have said before, having been a moderator for over 30 years, I have had a rule in my town meetings that we don't refer to personalities. We have tried to keep the personalities out of it. I guess that in the heat of debate, if you will, there is always a tendency to refer that "Well, Senator so and so said that... and Senator so and so said this and so on." I think that this is really a collegial body, I mean we are an intimate group and while we don't always agree politically, I think that we can all agree that we recognize how hard all of us have worked to be here and how seriously we take our oath of office and our duties to carry out as we see them as Senators. So I would certainly urge my colleagues, and I know that they certainly don't do it on purpose in any fashion. I would not think to suggest that they do, but I would certainly urge all of us to try if we can, obviously we are addressing specific questions to specific Senators and that is who you are talking to, but in terms of the debate, I would certainly hope that we can all exercise the highest degree of decorum and civility in terms of perhaps of referring to the previous speakers as one of the other Senators said and so on and so forth. That, I think, would go a long way towards assuring with the obvious amount of difficult tasks that we have before us that we would get through it in a meaningful and collegial fashion. Thank you.

**Recess.**

**Out of Recess.**

### **RESOLUTION**

Senator J. King moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, all bills ordered to third reading be by this resolution read a third time and passed.

**Adopted.**

### **LATE SESSION**

Senator Cohen moved that the business of the day being completed, that the Senate be in recess for the sole purpose of introducing legislation, printing of bills, referring bills to committee, scheduling committee hearings and Enrolled Bills Reports and amendments and that when we adjourn we adjourn to the Call of the Chair.

**Adopted.**

### **Third Reading and Final Passage**

**SB 16, relative to revocation of wills by divorce.**



**SB 19**, extending the reporting date of the state substance abuse treatment delivery system committee.

**SB 21**, relative to domestic animals.

**SB 26**, establishing a committee to study trustee process.

**SB 38**, relative to the optional term for election of a cooperative school district moderator.

**SB 41**, correcting a reference in provisions relating to hunting and fishing licenses for members of the armed forces.

**SB 43**, creating a commission to research making Hilton Park in the city of Dover property of that city.

**SB 78**, relative to contract requirements between a paid solicitor and a charitable trust.

**SB 115**, relative to participation by certain judges in the state employee group health and dental insurance programs.

**SB 118**, relative to requirements for retail installment contracts for motor vehicle sales.

**SB 161-L**, amending the contributory pension system for employees of the city of Manchester.

**HB 284-L**, relative to recount procedures in school districts.

### **REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill:

**HB 284**, relative to recount procedures in school districts.

Senator Disnard moved adoption.

**Adopted.**

### **HOUSE MESSAGE**

The House of Representatives has passed the following Bill with the following title, in the passage of which it asks the concurrence of the Senate:

**HB 109-FN-A-LOCAL**, establishing a flat rate education income tax and a statewide education property tax to fund public education and making an appropriation therefor.

### **INTRODUCTION OF HOUSE BILLS**

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 109 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committee.

**Adopted.**

### **First and Second Reading and Referral**

**HB 109-FN-A-LOCAL**, establishing a flat rate education income tax and a statewide education property tax to fund public education and making an appropriation therefor. **(Finance)**

Senator Johnson moved that the business of the day being completed moved that the Senate be in recess to the Call of the Chair.

**Adopted.**

**In recess to the Call of the Chair.**

**Out of Recess.**

### **LATE SESSION RESOLUTION**

Senator Cohen moved that the business of the day being completed that the Senate now adjourn until Wednesday, March 17, 1999 at 10:00 a.m.

**Adopted.**

**Adjournment.**

*March 17, 1999*

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by David P. Jones, Senate Chaplain.

You may not be aware of the fact that St. Patrick was a Welshman who chose to adopt Ireland as his homeland. Because of that decision, the course of Irish history and western civilization was altered, altered for the better. You also may not know that the way this wild and quirky saint first came to the emerald isle was as a teenager who had been kidnapped from his native land and sold into slavery. It is remarkable that someone forced into such a repugnant and degrading state could transcend the temptation to bitterness, hatred and revenge and instead give his life to the very people who had mistreated him. Today is a good day for all of us to remember that Saint Patrick was no more of a saint than you or I am. It's just that he found out how to move beyond his own personal preferences and to change the course of history. That is your job too.

*Lord of gentle whispers as well as deafening pronouncements; Lord of both our comfortable yesterdays and our untested tomorrows – make these men and women leaders who serve, deciders who are humble and forecasters who are wise, that together we may reap the benefits of our noblest traditions in ways that make us all feel that we are blessed with the luck of the Irish.*

*Amen.*

Senator Trombly led the Pledge of Allegiance.

### **INTRODUCTION OF GUESTS COMMITTEE REPORTS**

**SB 11-FN**, relative to the filing fee for securities in a combined prospectus offered for sale in New Hampshire by a mutual fund. Banks Committee. Vote 4-0. Ought to Pass, Senator Fraser for the committee.

**SENATOR FRASER:** Mr. President, currently, companies that sell a prospectus in New Hampshire have to pay a fee on each security in the prospectus, regardless of whether or not the security is actually for sale in the state. This bill would change the fee so that companies would only have to pay for those securities that are available for sale in the state. This bill has the potential of attracting new companies to New Hamp-

shire to offer mutual funds. Those smaller companies that currently do not offer securities in New Hampshire could start selling in New Hampshire because the fees on those securities that they don't sell in state would no longer be prohibitive. The committee unanimously recommends this bill ought to pass.

**Adopted.**

**Referred to the Finance Committee (Rule #24).**

**SB 99**, allowing the same interest rates and charges on small loans under \$1,500 as is allowed for small loans over \$1,500. Banks Committee. Vote 3-0. Ought to Pass, Senator Klemm for the committee.

**SENATOR KLEMM:** Senate Bill 99 allows the same interest rates and charges on small loans under \$1,500 as is allowed on small loans over \$1,500. This will enable lending institutions to better compete with credit lenders. The committee recommends this bill ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 123**, allowing nontestamentary transfer on death of mutual fund shares under the uniform transfer on death (TOD) security registration act. Banks Committee. Vote 3-0. Inexpedient to Legislate, Senator Wheeler for the committee.

**SENATOR WHEELER:** This bill would have added the words "mutual fund" to the definition of security under the uniform transfer on death security registration act. Some people have apparently had problems with mutual funds not having been interpreted to be part of securities. The committee heard testimony that mutual funds are indeed currently included under the Uniform Act; therefore, the bill was considered to be redundant and the committee recommends that this bill is inexpedient to legislate.

**Committee report of inexpedient to legislate is adopted.**

**SB 117**, relative to the duties of the board of trustees of the community-technical college system. Education Committee. Vote 7-0. Ought to Pass, Senator Johnson for the committee.

**SENATOR JOHNSON:** Senate Bill 117 corrects references to the community technical colleges definitions of operations and duties for the board of trustees. When SB 503 reorganized the colleges last year, several duties of the board of trustees were inadvertently removed from the statute, this bill restores duties section I and II of RSA 188-F: 4 as the statute existed before being amended by SB 503 last year. Senate Bill 117 repeals RSA 188-F: 4, VIII as established by SB 503 and inserts the language into the duty section instead of the operations section. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 119**, relative to the withdrawal of a pupil from school. Education Committee. Vote 6-0. Ought to Pass, Senator J. King for the committee.

**SENATOR J. KING:** I rise in support of SB 119 which removes the 60 day waiting period before a student over the age of 16 may withdraw from school once the school has obtained written permission from the student's parents or guardians. This was a request from the Department



of Education. In 1994 we enacted a law requiring that parents give written consent to a child's withdrawal. As the law was originally structured, a 60-day notice was required so the student could meet with the school guidance counselors before actually leaving school. This requirement was found to be an unfunded mandate and removed from law; therefore the bill before us removes the 60-day waiting period. There was also concern about the effect on students leaving and how we could help them. The committee felt that this bill was not the appropriate vehicle. A spokesperson from the Department of Education told us that the students are already made aware of education options available to them. The committee voted unanimously and recommends that you do the same.

**Adopted.**

**Ordered to third reading.**

**SB 91**, designating segments of the Cold River as protected under the rivers management and protection program. Environment Committee. Vote 6-0. Ought to Pass, Senator Russman for the committee.

**SENATOR RUSSMAN:** This bill is a wonderful bill that gives us the opportunity to protect the Cold River under the Rivers Management Plan. It is noted for its trout and salmon fisheries. It has 82 square miles of essentially unspoiled watershed area surrounding it. The community support for this bill was overwhelming. I urge you to support it.

**SENATOR DISNARD:** I am very pleased that the committee is recommending ought to pass. If anyone is a fly fisherman, it is 82 miles of pristine water. Good fly-fishing.

**Adopted.**

**Ordered to third reading.**

**SB 89-L**, relative to library trustees. Executive Departments and Administration Committee. Vote 6-1. Ought to Pass, Senator Trombly for the committee.

**SENATOR TROMBLY:** This bill does three things. First, it allows library trustees to ask the treasurer of the town or city for monies appropriated for the library without having to go through other elected officials. The second thing that it does is to allow library funds not to lapse. The reason that the committee felt that was particularly important was that many times in the smaller towns, libraries are located in buildings that sometimes the furnace breaks down or the roof needs repairs and by allowing the money not to lapse it will give the libraries' trustees needed funds to make those repairs which are really of an emergency nature and impact on the use of the library by the public. Thirdly, it allows for the appointment of alternate library trustees. We ask that you vote ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 12-FN-A**, relative to the World War II memorial campaign and making an appropriation therefor. Finance Committee. Vote 8-0. Ought to Pass, Senator McCarley for the committee.

**SENATOR MCCARLEY:** Senate Bill 12 makes an appropriation of one dollar for each New Hampshire citizen who served in World War II. This

bill was referred to Finance by the Public Affairs Committee where it met with no opposition and overwhelming support for us to proceed ahead with this. The bill appropriates \$60,000 in general funds for fiscal year 2000 to the American Battle Monuments Commission. I would urge your support.

**Adopted.**

**Ordered to third reading.**

**SB 36-FN-A**, relative to salary increases for care providers for persons with developmental and acquired disabilities and making an appropriation therefor. Finance Committee. Vote 8-0. Ought to Pass, Senator Squires for the committee.

**SENATOR SQUIRES:** Were it not for a number of other issues that command our attention, this would probably be the most significant bill of the month or perhaps even the session. It is still significant and it corrects this problem of longstanding. It was referred to the Finance Committee by the Public Institutions, Health and Human Services Committee where it met with no opposition. This bill appropriates \$4,553,875 in general funds for the biennium ending June 30, 2001 to the Department of Health and Human Services. This appropriation will be reduced by the amount of federal matching funds received. There are at the moment 1,575 direct care providers as indicated in the bill and assumed that federal matching funds would be 50 percent of expenditures, since the majority of individuals requiring direct care are eligible for Medicare reimbursement. The department stated that the appropriation would cover the additional benefits required by this bill. The Finance Committee unanimously recommends this bill ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 37-FN**, relative to fees for testing of domestic animals for disease. Finance Committee. Vote 8-0. Ought to Pass, Senator Larsen for the committee.

**SENATOR LARSEN:** This bill is a housekeeping bill to clarify the authority of the state veterinarian in the Dept. of Agriculture. Three veterinary technicians regularly test domestic animals. The Department collects fees to meet the costs of the tests. But the audit indicated (1) despite the intent of the legislature, the department had no authority to collect fees and (2) the fee schedule did not cover the cost of the tests. This bill confers the authority required and ensures the fees match the costs. The office of Legislative Budget Assistance has determined that this legislation will cost less than \$10,000. The Finance Committee recommends this bill ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 45-FN-A**, allowing a waiver of interest for the time period of an extension of the date of payment of the legacies and successions tax. Finance Committee. Vote 8-0. Ought to Pass, Senator McCarley for the committee.

**SENATOR MCCARLEY:** This bill was referred to the Finance Committee by the committee on Judiciary where it met with no opposition. This bill will help persons who inherit property, but who do not have suffi-

cient income to pay the legacies and succession tax. The bill allows persons who have received an extension for the legacies and succession tax to ask for a waiver of interest for the time period that they have the extension. The taxpayer must show good cause for the waiver. The Department of Revenue Administration is unable to determine how many taxpayers will apply for a tax extension under the terms in this bill. Any tax extensions granted would result in a waiver of interest owed, which will result in a decrease in state revenue. The Finance Committee recommends this bill ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 23**, urging the President and Congress to extend the Older Americans Act for a 3-year period. Internal Affairs Committee. Vote 4-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: Mr. President, SB 23 is a resolution urging the President and Congress of the United States to extend the provisions of the Older Americans Act for an additional three years. This is necessary to ensure that the policies affecting our older citizens are continued to be protective. The committee was unanimous in reporting this bill as ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 54**, allowing simultaneous service of a demand for rent and a notice to quit. Public Affairs Committee. Vote 3-0. Ought to Pass, Senator Trombly for the committee.

SENATOR TROMBLY: What this does is make a correction to a really antiquated process. When a tenant falls behind on their rent, the current law required the landlord to serve them first with a demand for rent and then another notice to quit. What the landlord does is to serve them in one hand and then the other. If the landlord doesn't do it in the proper fashion and then proceeds to district court to evict the tenant, if the timing isn't right, then the eviction will fail and the landlord is put in jeopardy financially. What this allows for is a simultaneous serving of the demand for rent and the writ of possession. The committee was unanimous in this vote of ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 17**, relative to the funeral arrangements. Public Affairs Committee. Vote 4-0. Ought to pass with amendment, Senator Krueger for the committee.

**1999-0378s**  
**01/03**

### **Amendment to SB 17**

Amend the bill by replacing section 5 with the following:

5 Release or Transfer of Body; To Whom Authorized. Amend RSA 290:11 to read as follows:

290:11 Release; Transfer of Body; *Liability Limited*.

I. No dead body of a human being may be released or transferred from any residence, hospital, or other facility to any person other than a funeral director or [his] designee, *or to the next-of-kin as defined*



*in RSA 290:16, IV, or designated agent under RSA 290:17* who shall be responsible for the completion of forms as required by RSA 290:12.

II. The body of any deceased person may be transferred to another town for preparation or for burial or cremation only under the direction of a funeral director, *next-of-kin, or designated agent*; provided that death was not sudden, or the result of violence, and provided that such body shall be returned to the town in which death occurred within 36 hours, or a permit for permanent removal, as required by this chapter, has been secured within that time.

III. Any person or institution releasing a body pursuant to this chapter shall be held harmless against and shall not be liable for, any harm, loss, cost, injury, damage, or claim of any kind whatsoever incurred by any party in connection with the release of the body.

SENATOR KRUEGER: Senate Bill 17 authorizes certain persons to make funeral arrangements without the assistance of funeral directors. With the costs of funeral expenses now averaging \$5,000 nationwide, and with funeral directors having the exclusive right to handle dead bodies, this legislation would provide a choice for family members who wish to care for their deceased. New Hampshire is currently only one of six states where the family cannot care for the deceased. At the request of the N.H. Hospital Association, an amendment was adopted by the committee which would "hold harmless" hospitals in the release of deceased to persons other than funeral directors. The Public Affairs Committee recommends that this bill ought to pass.

SENATOR SQUIRES: I didn't hear about this bill until this morning, but I think that I know what it means. If a family assumes the responsibility for a deceased person, does the same current statute exist as regards to burial? Can you bury anybody anywhere under this bill or do they still have to have some containment for that purpose?

SENATOR KRUEGER: To answer your question, Senator, actually all local ordinance laws would still prevail. No problem with that and there was no problem offered by any of the people that spoke to this bill. The only concerns were raised by the Hospital Association and that is why we have an amendment that is already in your calendar relative to that and we had one other concern which will be offered by the floor amendment, but there was no concern raised about that, but thank you for your question.

#### **Amendment adopted.**

Senator Trombly offered a floor amendment.

1999-0382s

01/10

#### **Amendment to SB 17**

Amend the bill by inserting after section 9 the following and renumbering the original section 10 to read as 11:

10 Subject Not Entitled to Compensation. Amend RSA 290:17, I to read as follows:

I. If the subject has designated a person to have custody and control in a written and signed document, custody and control belong to that person. *The person designated by the subject shall be entitled to no compensation or reimbursement of expenses related to the custody and control of the subject's body.*

SENATOR TROMBLY: The floor amendment which you have before you has been run by the members of the Public Affairs Committee and we have their unanimous endorsement. Following the hearing on the bill, there was one concern raised by the...I don't want to say the funeral directors, but people who are associated with the funeral industry were concerned that we not allow a new business to spring up where people are paid to retrieve corpses from the hospitals. The committee agreed that perhaps since the intent was for family members and the appropriate designated people to take care of the decedent that it would be appropriate to make absolutely clear in the legislation that there would be no compensation for picking up the corpse. So that is what the amendment does. Further, I would like to add to what Senator Krueger said, the liability amendment, which pertains not only to hospitals but it also pertains to nursing homes, so that if nursing homes release bodies to the appropriate people they will not be liable also. I would urge that you adopt the amendment. Thank you.

**Floor Amendment adopted.**

**Ordered to third reading.**

**Senator Gordon is in opposition to SB 17.**

**SB 101**, relative to landlord-tenant obligations. Public Affairs Committee. Vote 3-0. Ought to pass with amendment, Senator Trombly for the committee.

**1999-0297s**

**08/01**

### **Amendment to SB 101**

Amend RSA 540-A:3, VIII as inserted by section 6 of the bill by replacing it with the following:

VIII. No landlord shall knowingly rent premises, or maintain premises for rent, that are in violation of RSA 48-A:14, whether or not the municipality in which the premises are located has adopted ordinances pursuant to RSA 48-A. The court shall not find a violation of this paragraph unless, before initiating any action, the tenant notified the landlord in writing of the alleged violation, or the tenant proves by clear and convincing evidence that the landlord otherwise had knowledge of the violation. After notice of the violation, the landlord must initiate remedial action within 30 days or, in the event of an emergency, in such time as is required by the emergency, and must complete the repairs in a timely manner. Nothing in this paragraph shall be deemed or interpreted to interfere with, limit or otherwise restrict any municipal code enforcement program or activity as that program or activity may affect the premises.

SENATOR TROMBLY: This bill was a compromise and the result of a great deal of negotiations between the New Hampshire Legal Assistance, the Homeless Coalition, the Lakes Region Rental Association and the New Hampshire Property Owners Association. We had the unanimous consent of those interests representing landlords and representing tenants on this legislation. It does approximately eight things. It allows payments on behalf of tenants to be made by a public authority, state county and other organizations. It allows that a writ for possession of a premises be delivered by a police officer, notary public, justice of the peace or the sheriff. Currently only the sheriff can do that. It defines

what a voluntarily departed tenant was. It eliminates a requirement that the landlord maintain and carefully store personal property of tenants voluntarily vacated a dwelling unit and it allows a landlord to dispose of such tenant's personal property without waiting for 28 days. It prohibits landlords from renting the premise, which violates minimum housing standards. If a tenant in the building is responsible for any portion of the utility payments for common areas such as the lighting area of the porch or the outside lighting and that payment is going to be made by the tenant, that has to be disclosed by the tenant in the rental agreement. Further, it says that landlords can defend against valid violations of minimum housing standards on the grounds that others caused the violation and allows landlords to make counter claims for the costs of repairs. It was a unanimous vote of the committee, Mr. President, it was a result of a great deal of work by many organizations not usually able to agree. We would ask you to support the committee's recommendation.

**Amendment adopted.**

**Ordered to third reading.**

**SB 188-L**, allowing school districts to have a special vote on a bond issue in the same calendar year in which they voted on the bond issue. Public Affairs Committee. Vote 4-0. Ought to Pass, Senator Roberge for the committee.

**Senator Trombly moved to recommit.**

**Adopted.**

**SB 188 is recommitted to the Public Affairs Committee.**

**SB 60**, establishing a committee to study the licensure of radiographers and radiologic technicians. Public Institutions, Health and Human Services Committee. Vote 4-0. Ought to Pass, Senator Wheeler for the committee.

**SENATOR WHEELER:** I rise in support of SB 60, establishing a committee to study the licensure of radiographers and radiologic technicians. This study committee would bring the necessary parties together to discuss the issues surrounding the licensure of radiographers and radiologic technicians. As we all know, licensure of any kind is always a highly debated topic during public hearings. The committee feels that it is more prudent to fully explore the areas of concern before proposing legislation on licensure in this field. New Hampshire is the only state in New England without medical consumer protection in regards to radiographers and radiologic technicians, as X-ray technicians are not licensed in this state. In New Hampshire, we license the X-ray equipment, but not the operator. There is no standard of competence, nor any instruction given in radiation safety for X-ray technicians, which increases risk to hazards such as over-exposure for patients and technicians alike. The committee feels that this study committee will facilitate establishing a uniform process of licensure for these technicians. Therefore, I urge you to support SB 60.

**Adopted.**

**Ordered to third reading.**

**SB 65**, establishing a study committee to review field activities conducted by the Department of Health and Human Services relative to



children, youth and families. Public Institutions, Health and Human Services Committee. Vote 6-0. Ought to Pass, Senator Gordon for the committee.

**SENATOR GORDON:** Senate Bill 65 would create a study committee commissioned to study field practices employed by the Department of Children, Youth and Families. In order to protect privacy, DCYF conducts its field activities largely in secrecy. Testimony was received from individuals expressing concerns regarding the methods employed by DCYF field representatives. This bill would provide some legislative oversight to determine whether these concerns are founded. The committee urges passage of SB 65.

**Adopted.**

**Ordered to third reading.**

**SB 62-FN-A-L**, relative to the acquisition of Umbagog Lake Campground in Cambridge, New Hampshire, and making an appropriation therefor. Wildlife and Recreation Committee. Vote 5-0. Ought to Pass, Senator D'Allesandro for the committee.

**SENATOR D'ALLESANDRO:** This bill enables the state to secure access to and control of recreational opportunities on and around Umbagog. Through the Land Conservation Investment Program, DRED has acquired ownership of 1,351 acres of frontage and the Land Conservation Investment Program has acquired conservation easements on another 2,259 acres around the lake. This bill enables DRED to acquire 9.6 acres in Cambridge now operated as a campground. The tract is located in an area targeted by the federal government to be included in Lake Umbagog Wildlife Refuge; therefore, its acquisition will ensure that the state has access to and control of recreational opportunities. The sale of this property is being negotiated by the Trust for Public Lands with the owners. The Division of Parks and Recreation will manage the property, operating it as a campground until the sale is concluded. The sale price shall not exceed \$600,000. The transaction will be financed by borrowing as part of the capital budget.

**Adopted.**

**Referred to the Finance Committee (Rule #24).**

**SB 92-FN**, relative to education grants funded by the companion animal-neutering fund. Wildlife and Recreation Committee. Vote 6-0. Ought to Pass, Senator Wheeler for the committee.

**SENATOR WHEELER:** Senate Bill 92 enables the Pet Overpopulation Committee to award grants for educational programs designed to reduce the number of stray and unwanted dogs and cats. It enables the commissioner of agriculture to set aside not more than 2 percent of funds deposited in the Companion Animal Neutering Fund each year for these educational grants. Grants will be awarded to municipal and nonprofit corporations. Educational programs will provide another tool for addressing the problem of pet overpopulation. This is a request by the Pet Overpopulation Committee and received unanimous approval by the committee and I urge its passage. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 142**, establishing a process for appeal of decisions of the executive director of fish and game. Wildlife and Recreation Committee. Vote 5-0. Inexpedient to Legislate, Senator Disnard for the committee.

**SENATOR DISNARD:** The prime sponsor requested that the committee vote this inexpedient to legislate. The reason was that we do not need this in law. The commissioners and the executive director of the Fish and Game Department agreed to set up and establish an informal appeal process.

**Committee report of inexpedient to legislate is adopted.**

### **TAKEN OFF THE TABLE**

Senator D'Allesandro moved to have **SB 14**, establishing a committee to study the financial impact of federal welfare reform on the cities and towns of New Hampshire, taken off the table.

**Adopted.**

**SB 14**, establishing a committee to study the financial impact of federal welfare reform on the cities and towns of New Hampshire.

**SENATOR D'ALLESANDRO:** Senate Bill 14 establishing a committee to study the financial impact of federal welfare reform on the cities and towns of New Hampshire and Senator Fred King had some concerns that the counties were not included in the committee that was being set up. Membership on the House side does take into consideration that members of the Municipal and County Government Committee would be included in the study committee. I think the need to expedite this piece of legislation is apparent. If indeed counties need to be included, I believe that it could be amended in the House. The importance of the bill is the time frame. The committee must report back by December of 1999. Time is fast approaching. Obviously we have a number of things on our plate, but this is a very serious situation as federal welfare really disappears or help disappears in the 2001. So something has to be done and has to be done quickly. I would say that we should move this process along and make adjustments in the House if necessary.

**Question is on the committee amendment (0200).**

**Amendment adopted.**

**Ordered to third reading.**

**Senator F. King is in opposition to SB 14.**

### **ANNOUNCEMENTS**

#### **RESOLUTION**

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourn until Tuesday, March 23, 1999 at 9:00 a.m.

**Adopted.**

**LATE SESSION****Third Reading and Final Passage**

**SB 12-FN-A**, relative to the World War II memorial campaign and making an appropriation therefor.

**SB 14**, establishing a committee to study the impact of federal welfare reform on the cities and towns of New Hampshire.

**SB 17**, relative to the funeral arrangements.

**SB 23**, urging the President and Congress to extend the Older Americans Act for a 3-year period.

**SB 36-FN-A**, relative to salary increases for care providers for persons with developmental and acquired disabilities and making an appropriation therefor.

**SB 37-FN**, relative to fees for testing of domestic animals for disease.

**SB 45-FN-A**, allowing a waiver of interest for the time period of an extension of the date of payment of the legacies and successions tax.

**HB 54**, allowing simultaneous service of a demand for rent and a notice to quit.

**SB 60**, establishing a committee to study the licensure of radiographers and radiologic technicians.

**SB 65**, establishing a study committee to review field activities conducted by the department of health and human services relative to children, youth and families.

**SB 89-L**, relative to library trustees.

**SB 91**, designating segments of the Cold River as protected under the rivers management and protection program.

**SB 92-FN**, relative to education grants funded by the companion animal-neutering fund.

**SB 99**, allowing the same interest rates and charges on small loans under \$1,500 as is allowed for small loans over \$1,500.

**SB 101**, relative to landlord-tenant obligations.

*March 23, 1999*

The Senate met at 9:00 a.m.

A quorum was present.

The prayer was offered by Father David P. Jones, Senate Chaplain. I don't know what you are going to decide this week. I don't really know what you should decide this week. But whatever choice you make at this watershed moment, I hope you will remember three things: Children are not liberals or conservatives; they have no party affiliation, but they do have their futures. This is about that. If the decision you make this week is guided by considerations that have to do primarily with money, you will make the wrong decision. This is not about money only. A good end never justifies mediocre means. In the long run, how you resolve this will determine if you resolve this. Today is your chance, so choose carefully. Let us Pray:

*Lord of Aspirin, Maalox, Alka Seltzer and Pepto Bismol, may Your all pervasive power quietly explode in this old chamber on this new day. Quietly transform the tension of these moments into a kind of wisdom*



*that can take a long view. May the garish glare of attention fixed upon these twenty-four not distract but rather illuminate for them the right path for us to walk together with our children. Give them each the ability to let go of their fears. Equip them with ears that are deaf to the siren song of any political ideology. And endow them with the courage to travel only the road of integrity – even and especially when it is lonely. Be present, O Lord, and hang around all week long.* Amen

Senator Disnard led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS

### SENATE RULES DEADLINES

Senator J. King moved that the proposed deadline for Senate bills to be disposed of in the Senate, March 18, 1999, be changed to a date uncertain.

#### Adopted.

Senator Trombly offered the following resolution:

### 1999 SESSION

99-1020

04/01

#### SENATE RESOLUTION

5

A RESOLUTION urging Congress to authorize construction of the World War II Memorial in Washington, D.C. to begin immediately.

SPONSORS: Sen. Trombly, Dist 7; Sen. Disnard, Dist 8; Sen. Wheeler, Dist 21; Sen. McCarley, Dist 6; Sen. Russman, Dist 19; Sen. Krueger, Dist 16; Sen. Roberge, Dist 9; Sen. J. King, Dist 18; Sen. Larsen, Dist 15; Sen. Fraser, Dist 4; Sen. Gordon, Dist 2; Sen. Johnson, Dist 3; Sen. F. King, Dist 1; Sen. Francoeur, Dist 14; Sen. Brown, Dist 17; Sen. Klemm, Dist 22; Sen. Squires, Dist 12; Sen. Fernald, Dist 11; Sen. Below, Dist 5; Sen. Blaisdell, Dist 10; Sen. Hollingworth, Dist 23; Sen. Pignatelli, Dist 13; Sen. Cohen, Dist 24; Sen. D'Allesandro, Dist 20

COMMITTEE: [committee]

#### ANALYSIS

This resolution urges Congress to permit construction of the World War II Memorial in Washington, D.C. to begin immediately.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

99-1020

04/01

### STATE OF NEW HAMPSHIRE

*In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine*

A RESOLUTION urging Congress to authorize construction of the World War II Memorial in Washington, D.C. to begin immediately.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

Whereas, in 1993, Congress passed legislation authorizing the building of a national World War II Memorial in Washington, D.C., or its immediate environs; and

Whereas, under the provisions of the Commemorative Works Act, a construction permit must be obtained from the Secretary of the Interior within 7 years of the legislation authorizing the construction of the World War II Memorial, that is, by May 2000; and

Whereas the World War II Memorial shall be funded by private contributions, as specified in federal law, including corporate and foundation giving, veterans groups, associations, and individual donations; and

Whereas the capital campaign goal of the World War II Memorial project is \$100 million, of which approximately \$38 million has been received thus far; and

Whereas, before a construction permit will be issued, the final design must be approved and all funds for construction of the World War II Memorial must be on hand; and

Whereas, in consideration of the approaching May 2000 deadline, the honor, courage, and memory of every veteran who served in World War II shall be more appropriately served, and the gratitude of a nation more fully expressed, by expediting the construction process to permit construction of the World War II Memorial to begin immediately; now, therefore, be it

Resolved by the Senate:

That the honor and achievements of all World War II veterans shall be best served by allowing for the construction of the World War II Memorial to begin immediately; and

That Congress undertake any and all appropriate action, legislative or otherwise, to permit the construction process for the World War II Memorial to begin immediately; and

That copies of this resolution, signed by the president of the senate, be forwarded by the senate clerk to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and to each member of the New Hampshire congressional delegation.

SENATOR TROMBLY: This resolution being passed around at the present time is the resolution that all 24 of us have cosponsored which will be sent onto the congressional delegation asking that the World War II Memorial construction begin immediately rather than waiting for all of the monies for the construction to be raised. If you remember we had a bill to contribute, I believe, \$60,000 to the construction of this memorial. The Public Affairs Committee learned at that time that the construction could not begin pursuant to an act of congress until all of the money had been raised for that memorial. The Public Affairs Committee felt very strongly that the delay in building this memorial until that time was unwarranted, unnecessary and unneeded. We spoke to you and requested that you sign onto the resolution with us to urge Congress to allow the construction of the World War II Memorial in Washington, D.C. to begin immediately. That is the resolution and all 24 members of the Senate are cosponsors of this resolution. I ask the president that we pass this resolution at this time.

**Adopted.**

### COMMITTEE REPORTS

**SB 113**, establishing a division of travel and tourism development within the department of resources and economic development. Executive Departments and Administration Committee. Vote 5-2. Ought to Pass, Senator Cohen for the committee.

**SENATOR COHEN:** This bill is the suggestion of the governor's Task Force on Travel and Tourism. As we all know, travel and tourism in New Hampshire is a crucial component of the state's economy, and this bill elevates travel and tourism to the departmental level to ensure that it won't be overlooked. The bill also creates an Advisory Committee to ensure that the best efforts are made in the state to promote travel and tourism. This bill is important because all businesses in New Hampshire benefit from travel and tourism, not just the hotels, restaurants and resort locations who have important linkages with Europe. We recognized that travel and tourism at a departmental level would make certain that the state takes proper steps to promote the business. The committee recommends this bill ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 136-FN**, allowing certain state employees to take paid leave to participate in disaster relief service work. Executive Departments and Administration Committee. Vote 7-0. Rereferred to Committee, Senator Larsen for the committee.

**SENATOR LARSEN:** This bill would have allowed a state employee who is a certified disaster relief services volunteer to take paid leave if requested for service by the American Red Cross and authorized by the employee's supervisor for not more than 15 working days in a fiscal year. The committee heard, however, that the bill supporters and the Red Cross have requested more time to determine what potential benefits and impacts of employees leaving for these periods would be and therefore recommends rereferral and further study.

**Adopted.**

**SB 136-FN is rereferred to the Executive Departments and Administration Committee.**

**SB 180**, establishing a committee to study the improvement of employment opportunities offered by the state of New Hampshire for persons with disabilities. Executive Departments and Administration Committee. Vote 7-0. Ought to Pass, Senator Cohen for the committee.

**SENATOR COHEN:** This bill will establish a committee to look into issues related to state employment of people with disabilities. This committee is timely, as the federal government is considering changes to employment regulations related to people with disabilities. The committee will be able to address any barriers to employment of people with disabilities by the state and suggest ways to remove those barriers before the state would face possible litigation. This committee will be a proactive step for the state to address issues related to employment of people with disabilities. The committee recommends this bill ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 181-FN**, relative to the licensure of geologists. Executive Departments and Administration Committee. Vote 7-0. Rereferred to Committee, Senator Roberge for the committee.



SENATOR ROBERGE: This bill would have established a board of professional geologists that would regulate the practice of geologists. The parties concerned with this bill agreed that the bill needed work, and resolved to continue to try to find language agreeable to all sides; therefore, the committee recommends that this bill should be rereferred in order to accommodate the work that needs to be done on this bill.

**Adopted.**

**SB 181-FN is rereferred to the Executive Departments and Administration Committee.**

**SB 107**, relative to fees for examination of domestic societies. Insurance Committee. Vote 8-0. Ought to pass with amendment, Senator J. King for the committee.

**1999-0420s**

**01/09**

### **Amendment to SB 107**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to fees for examination of domestic societies and foreign societies.

Amend the bill by replacing all after the enacting clause with the following:

1 Examination of Domestic Societies; Gender Neutral. Amend RSA 418:27 to read as follows:

418:27 Examination of Domestic Societies. The commissioner of insurance, or any person [he] **the commissioner** may appoint, shall have the power of visitation and examination into the affairs of any domestic society. [He] **The commissioner** shall cause such an examination to be made at least once in [3] 5 years. [He] **The commissioner** may employ assistants for the purpose of such examination, and he **or she**, or any person he **or she** may appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witness under oath and examine its officers, agents and employees or other persons in relation to the affairs, transactions and condition of the society. The expense of such examination and all valuations, including compensation and actual expense of examiners, shall be paid by the society examined, or whose contracts are valued upon statements furnished by the commissioner of insurance. The compensation of examiners shall in each case be fixed by the commissioner of insurance according to current standard rates. Whenever, after examination, the commissioner is satisfied that any domestic society has failed to comply with any provisions of this chapter, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently, or in a way hazardous to its members, creditors, or the public, or whenever any domestic society, after the existence of one year or more, shall have membership of less than 400 (or shall determine to discontinue business), the commissioner may present the facts relating thereto to the attorney general, who shall, if [he] **the attorney general** deems the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and such court shall thereupon notify the officers of such society of a hearing, and if it shall then appear that such society should be closed, said society shall be enjoined from carrying on any further business, and some person may be appointed receiver of such society, and shall proceed at once to take possession of

the books, papers, moneys and other assets of the society, and shall forthwith, under the direction of the court, proceed to close the affairs of the society and to distribute its funds to those entitled thereto. No such proceedings shall be commenced by the attorney general against any such society until after notice has been duly served on the chief executive officers of the society and a reasonable opportunity given to it, on a date to be named in said notice, to show cause why such proceedings should not be commenced.

2 Foreign Societies. Amend RSA 418:29 to read as follows:

418:29 Examination of Foreign Societies. The commissioner of insurance, or any person whom ~~he~~ **the commissioner** may appoint, may examine any foreign society transacting or applying for admission to transact business in this state. The ~~said~~ commissioner may employ assistants, and ~~he~~ **the commissioner**, or any person he **or she** may appoint, shall have free access to all books, papers and documents that relate to the business of the society. ~~He~~ **The commissioner** may, in his **or her** discretion, accept, in lieu of such examination, the examination of the insurance department of the state, territory, district, province or country where such society is organized. The compensation and actual expenses of the examiners making any such examination, and for all general or special valuations, shall be paid by the society examined, or whose contract obligations have been valued upon statements furnished by the commissioner of insurance~~[, provided, the fees of the examiners shall not exceed \$25 per day for each examiner]~~. If any such society, or its officers, refuse to submit to such examination, or to comply with the provisions of the section relative thereto, the authority of such society to write new business in the state shall be suspended or license refused until satisfactory evidence is furnished the commissioner relating to the condition and affairs of the society, and during such suspension the society shall not write new business in this state.

3 Effective Date. This act shall take effect 60 days after its passage.

1999-0420s

#### AMENDED ANALYSIS

This bill changes the requirement for examination of domestic societies to at least once every 5 years.

The bill also deletes the requirement that fees for examination of foreign societies shall not exceed \$25 per day for each examiner.

SENATOR J. KING: I rise in support of SB 107 as amended relative to fees and regulations governing domestic societies. Organizations like the ACA, and the Manchester Association and Canadian American provide a variety of services to the members including insurance. It is regulation of these societies that the insurance department uses procedures that are different than those used for regular insurance companies. Senate Bill 107 changes the examination period from once every three years to once every five years so that it will coincide with the regular insurance companies. The Insurance Committee further amended it to remove the cap on examination costs. The Insurance Department supports the bill as amended and the committee unanimously urges that it ought to pass.

**Amendment adopted.**

**Ordered to third reading.**

**SB 128**, replacing the housing assistance fund trust fund with a homeless prevention fund. Public Institutions, Health and Human Services Committee. Vote 4-0. Ought to Pass, Senator Squires for the committee.

SENATOR SQUIRES: Mr. President, the testimony that the committee heard about this bill was poignant and powerful; unfortunately, we did not have the entire committee present when this bill was heard and I would like to ask your advice and assistance in recommitting this bill because there is a division in the committee about the funding mechanism, not the purpose of the bill, but the funding mechanism. So instead of thrashing that out by amendments here on the Senate floor, I would like to recommit it so that we could do it in an executive session.

**Senator Squires moved to recommit.**

**Adopted.**

**SB 128 is recommitted to the Public Institutions, Health and Human Services Committee.**

**SB 140**, relative to ear piercing. Public Institutions, Health and Human Services Committee. Vote 3-0. Ought to pass with amendment, Senator Squires for the committee.

**1999-0453s**

**03/10**

### **Amendment to SB 140**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to ear and body piercing.

Amend the bill by replacing section 1 with the following:

1 New Chapter; Ear and Body Piercing. Amend RSA by inserting after chapter 141-H the following new chapter:

#### **CHAPTER 141-I**

##### **EAR AND BODY PIERCING**

141-I:1 Ear and Body Piercing. Persons engaged in the practice of piercing the ear or any other part of the human body shall use disposable single-use needles and instruments for such purpose. Any person violating the provisions of this chapter shall be guilty of a violation. Nothing in this chapter shall be construed to affect persons operating in compliance with New Hampshire code of administrative rules, HE-P 1103.02.

**1999-0453s**

#### **AMENDED ANALYSIS**

This bill requires persons engaged in piercing the ear or any other part of the human body to use disposable single-use needles.

SENATOR SQUIRES: This bill arose as a result of a discussion that I had with a constituent who is a pediatrician. She pointed out to me the fact that currently, unlicensed individuals are permitted to pierce body parts with reusable devices, which is not an assault on body piercing, although I must say I wonder sometimes about why that is done, but what I don't wonder about...what is clear to me is that if you are going to do it, you should do it with a device that is used once and thrown away and that is not the case. It is not satisfactory that you puncture the human body, its skin, and then put the device into alcohol or wipe it off. The stakes here involve hepatitis B and C and no one wants to get that. So what the bill does is simply say that if you want to engage yourself in this business, you need to use single use devices, of which there are plenty available; or you have to sterilize these devices in the same manner that is available to the recipients of tattoos and, setting the whole issue of that problem aside, the fact remains that you are



probably safer in a tattoo parlor than you are in some other establishment that undertakes this sort of business; therefore, what we are asking the Senate to do is support the idea that single use disposable devices are used for this purpose or if not, that they be adequately sterilized to eliminate the potential transmission of communicable and dangerous diseases. Thank you.

SENATOR BROWN: Senator Squires, I didn't see this bill before today, so I just want to ask you a question. It mentions piercing ears, what about other parts of the body, that is my first question? My second question is does this apply to individuals not just businesses? It doesn't say businesses.

SENATOR SQUIRES: I suppose if an individual wants to do this, Senator Brown, you are on your own. My advice is that that is hazardous, but so be it. I must admit that we had amended this bill to include body piercing. You will see in the calendar, the amendment to SB 140. The amendment extended the bill to cover body piercing.

SENATOR BROWN: Thank you.

SENATOR SQUIRES: In case you are wondering about administrative rules, HE-P 1103.02 that is what covers tattoo parlors.

**Amendment adopted.**

**Ordered to third reading.**

**SB 34**, requiring at least two crew members on trains. Transportation Committee. Vote 3-1. Inexpedient to Legislate, Senator Gordon for the committee.

SENATOR GORDON: Senate Bill 34 would require at least two crew members on all trains operating in the state. The Transportation Committee felt that this requirement is already covered by federal rules and that this is not within the jurisdiction of the state to regulate. The New Hampshire Department of Transportation also questioned the state's ability to enforce this requirement should it become enacted. Because this is already covered by federal rules, the Transportation Committee recommends that SB 34 be inexpedient to legislate.

**Committee report of inexpedient to legislate is adopted.**

**SB 35**, establishing a study committee to investigate motor vehicle inspection requirements. Transportation Committee. Vote 4-0. Ought to Pass, Senator Trombly for the committee.

SENATOR TROMBLY: Currently in statute there are only two requirements for inspection of automotive vehicles, everything else that is inspected is done by rules and the committee felt that a study committee which this bill establishes, to look at how and why and where we study and we inspect what we do. This is the appropriate thing to do at this time. There was no one who testified in opposition. I agree with Senator Gordon if he so chooses that I would spend the hours this summer to chair this committee, along with him. No, I am kidding. Please pass this bill. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 42-L**, establishing a committee to study safety improvements at the U.S. Route 1 traffic circle in the city of Portsmouth. Transportation Committee. Vote 4-0. Ought to Pass, Senator Pignatelli for the committee.

SENATOR PIGNATELLI: Senate Bill 42 establishes a committee to study safety improvements at the U.S. Route 1 traffic circle in the city of Portsmouth. The sponsors of this legislation request that a study be done of the traffic at the Portsmouth traffic circle. Testimony received at the hearing shared concerns regarding the substantial growth in traffic flowing through this circle in past years. This is an old traffic facility, which was designated during World War II, and not designed to handle the approximately 30,000 vehicles per day which flow through it. Because there is concern that fixing the circle and dealing with the congestion may be worse for the city than continuing with improvements planned by the Department of Transportation, the Transportation Committee felt that the study process would be an excellent mechanism to look at all of the issues and potential impacts and recommends that SB 42 be ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 75**, relative to out-of-state boats. Transportation Committee. Vote 4-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: Senate Bill 75 eliminates the exemption from boat registration for out-of-state boats using the waters of this state for not more than 30 consecutive days. This bill also permits the Commissioner of the Department of Safety to waive the registration fees for such boats. The Coast Guard currently estimates that annually, approximately 30,000 powerboats from out-of-state are using New Hampshire waters, though it is not possible to confirm this number because there is no registration process. There is no mechanism to instruct or inform boaters of New Hampshire boating statutes regarding safety and sanitation or about the spreading of exotic weeds. The New Hampshire Lakes Association, the Marine Trade Association and the New Hampshire Department of Safety all support this legislation. The Transportation Committee recommends that SB 75 be ought to pass.

SENATOR DISNARD: Senator Gordon, if the commissioner or someone can waive any boat that is 30 days or less, how are we going to determine how many boats use our lakes? You used the figure 35,000.

SENATOR GORDON: The issue is that we are currently in an interstate and the interstate compact requires us not to charge out-of-state boaters who are using our waters for short periods of time. So the purpose of this bill is to require them to at least register, but to waive the fee and not charge them, so that way we can keep an accurate count of number of boaters and still comply with the terms of the compact.

SENATOR LARSEN: I understand the intent of this bill to somehow monitor the boats coming into the state, but how does someone trailering a boat into this state know that they are supposed to register with the department if they intend to stay here for 31 days or less? How do they know **TAPE CHANGE** I don't understand how you can enforce this?

SENATOR GORDON: Well, I would assume that we would enforce it the way that we do the rest of our boating laws. I think that there is an assumption that if people are going to be using the benefits of the state and are going to be here in New Hampshire that they operate in conformity with the laws and that they have some certain responsibility to understand what those laws are. Right now, I think that is exactly what the problem is that people are just coming into the state, using the state's waters and are not making any effort to become familiar with what the states laws are and this would require them to do

so. I guess that if you get to the bottom line of your question, I think that there will have to be some informational program to allow or to make out-of-state boaters knowledgeable of the fact that they are, in fact, required to register.

**SENATOR F. KING:** Senator Gordon, this is the way that it used to be in the past. There was no **TAPE INAUDIBLE** between the states. If I wanted to run my boat in Maine, I had to register it in Maine. If I want to run it in Vermont I had to register it in Vermont. Is that what is going to happen to me again if we become an island unto ourselves, we will then have to register our boats in other states if we want to use them?

**SENATOR GORDON:** That may very well be the case that you would have an obligation to register your boats. The issue is whether or not you have to pay redundant fees in the state. So what we are going to provide is the opportunity to waive the fee so that you can bring your boat into New Hampshire and use your boat, but not have to pay in Massachusetts, Maine, New Hampshire or Vermont. This is a program which is currently underway, I understand, on Lake George in the state of New York and they are currently requiring registrations there. It becomes importantly important to us when we talk about zebra mussels and milfoil and exotic weeds that are taking holds in our lakes. We need to be able to make sure that people don't come in from other states and simply transplant these exotic weeds or other foreign matter into our lakes and make our lakes less acceptable for usage, not just by out-of-staters, but for people who live here full time.

**A division vote is requested.**

**Yeas: 13 - Nays: 9**

**Adopted.**

**Ordered to third reading.**

**SB 87**, relative to the authority of the auxiliary marine patrol. Transportation Committee. Vote 4-0. Inexpedient to Legislate, Senator Trombly for the committee.

**SENATOR TROMBLY:** Senate Bill 87 would have allowed the Department of Safety to continue to hire auxiliary marine patrol personnel. Currently they do not have the ability to detain or to arrest someone they stop for the infraction of the boating rules. This bill would have given them that authority. The committee had concerns that the auxiliary patrol officers do not have the same number hours of training as a regular marine patrol. In particular, one instance cited as a reason for the legislation was that if a drunk boater is stopped by an auxiliary marine patrol officer, they would have to detain that person until the marine patrol officer came and made the arrest. We felt that that would perhaps put auxiliary patrol officers in harms way. Further, the committee could not figure out the difference between detention and arrest. We felt that to give the auxiliary patrol the powers to detain without calling it what it is really is, which is arrest, was something where we didn't want to go. The vote was unanimous of the committee and I would ask that you support the committee's recommendation.

**Committee report of inexpedient to legislate is adopted.**

**SB 155**, relative to the naming of certain bridges in the city of Concord. Transportation Committee. Vote 4-0. Ought to Pass, Senator Roberge for the committee.



**SENATOR ROBERGE:** Senate Bill 155 would provide for the three bridges in the city of Concord to be named in honor of the veterans of World War II, the Korean War and the Vietnam War. Approximately 60,000 New Hampshire citizens fought in World War II — approximately 28,000 fought in the Korean War — and approximately 37,000 fought in the Vietnam War. It is a fitting tribute and recognition of the sacrifices of those New Hampshire veterans who served their country that they be memorialized in our capital city in this manner. The Senate Transportation Committee unanimously supports this legislation.

**SENATOR LARSEN:** It is an honor to stand for a bill today that truly is noncontroversial. This bill began as a request because a number of Korean veterans believed that they did not have adequate recognition. As we looked at it, it made sense as a capital city for us to recognize the work and the sacrifices of all of the veterans of this state in the great capitals of the world and the capitals throughout our country. We recognize bridges and memorialize them to those who have fought in wars and it is only appropriate that New Hampshire's capital city name its bridges in honor of those who fought in the wars of this country. Thank you.

**Adopted.**

**Ordered to third reading.**

**Recess.**

**Out of Recess.**

**HB 112**, increasing the tobacco tax and imposing the tax on all types of tobacco products. Finance Committee. Vote 6-2. Ought to pass with amendment, Senator Squires for the committee.

**1999-0475s**

**08/01**

### **Amendment to HB 112-FN-A**

Amend the title of the bill by replacing it with the following:

**AN ACT** increasing the tobacco tax and dedicating a portion of tobacco tax revenues to tobacco use prevention and cessation programs.

Amend the bill by replacing all after the enacting clause with the following:

1 Cigarette Tax. Amend RSA 78:7 to read as follows:

78:7 Tax Imposed. A tax upon the retail consumer is hereby imposed at the rate of [37] 40 cents for each package containing 20 cigarettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes, on all tobacco products sold at retail in this state. The payment of the tax shall be evidenced by affixing stamps to the smallest packages containing the tobacco products in which such products usually are sold at retail. The word "package" as used in this section shall not include individual cigarettes. No tax is imposed on any transactions, the taxation of which by this state is prohibited by the Constitution of the United States.

2 New Subdivision; Disposition of Tobacco Tax Revenues; Special Fund. Amend RSA 78 by inserting after section 31 the following new subdivision:  
Disposition of Revenues

78:32 Disposition of Revenues. Three million dollars of the gross revenues collected under this chapter shall be deposited at the end of each fiscal year beginning June 30, 2000 in the tobacco use prevention and cessation fund established in RSA 78:33.

78:33 Tobacco Use Prevention and Cessation Fund. There is established within the office of the state treasurer a tobacco use prevention and cessation fund. Money from this fund shall be continually appropriated to the department of health and human services for tobacco use prevention and cessation programs and shall be allocated as follows:

	<u>Percentage</u>	<u>Amount</u>
I. Tobacco use prevention community programs and grants	25	\$750,000
II. Tobacco use prevention school programs and grants	18	\$540,000
III. Tobacco use prevention state-wide programs and grants	15	\$450,000
IV. Tobacco use cessation programs	15	\$450,000
V. Tobacco use prevention and cessation counter marketing	18	\$540,000
VI. Evaluation	5	\$150,000
VII. Administration and enforcement	4	\$120,000

3 New Subparagraph; Special Fund. Amend RSA 6:12, I by inserting after subparagraph (vvv) the following new subparagraph:

(www) Three million dollars of the annual gross revenues of the tobacco tax collected under RSA 78, which shall be credited as provided in RSA 78:32 to the tobacco use prevention and cessation fund established under RSA 78:33.

4 Applicability. This act shall apply to all persons licensed under RSA 78:2. Such persons shall inventory all taxable tobacco products in their possession and file a report of such inventory with the department of revenue administration on a form prescribed by the commissioner within 20 days after the effective date of this act. The tax rate effective April 1, 1999, shall apply to such inventory and the difference, if any, in the amount paid previously on such inventory and the current effective rate of tax shall be paid with the inventory form. The inventory form shall be treated as a tax return for the purpose of computing penalties under RSA 21-J.

5 Effective Date. This act shall take effect April 1, 1999.

1999-0475s

#### AMENDED ANALYSIS

This bill increases the tobacco tax by 3 cents. The bill dedicates \$3,000,000 of annual tobacco tax gross revenues to a tobacco use prevention and cessation fund.

SENATOR SQUIRES: This bill came over to us from the House with a recommendation that we increase the cigarette tax by 25 cents. In the course of the deliberations, and they were lengthy, we changed it, and here is why: For those of you who were at the committee hearing, I ask your forbearance for some repetition. But I sometimes wonder if somebody was writing fifty years from now about what New Hampshire was like, setting aside for the moment, certain other issues, but what would people say? Would this be an age of optimism or would it be an age of concern? Would this be an age of self-indulgence? How about an age of cynicism? We can make a big case for cynicism and one of the reasons that I say that is our approach to tobacco. We promote the sale of tobacco. In the committee hearings we were described as the PX of New England, which for those of you that haven't been in the military means "post exchange." Our pricing policies, our taxation policies, en-

sure that 60 percent of our tobacco sales go to non New Hampshire residents. So the state is in the business of promoting tobacco. Confronted on the other side is the fact that 2000 or 25 percent of the deaths in New Hampshire each year come from tobacco-related diseases and 40 percent of the young women in this state smoke. About that issue, about prevention, cessation, the state spends nothing. We get a grant from the CDC of \$300,000 but not one cent of taxpayer's money is spent preventing this problem and the results thereto. That, I think, is a cause for some cynicism. I don't want to be cynical. I don't want to be part of a government that is cynical. So we changed this bill to establish the public policy point of view that revenues collected from the sale of cigarettes, that some of it is used for cessation and prevention. How much? One and a half cents. That is what this bill requires. Now you say, with all of this money coming from the Attorney General's settlement, why not use that? Well, hopefully, we will use that. The fact of the matter is that at the level proposed in that bill, the funding is insufficient. It is not enough. You can't do a little bit of prevention. It is like taking a teaspoon of suntan lotion and going out into the sun and thinking that you have done something by covering part of your hand. You are going to get burned. If we don't fund this right, if we don't commit the necessary resources through tobacco prevention and cessation, we are not only wasting our money, we are not going to accomplish anything. So what the bill does, first of all, it sets the public policy that tax dollars, one and a half cents, will be used for cessation and prevention, which, then, when coupled with the tobacco fund dollars will provide for the citizens a meaningful program that achieves these ends. I ask for your support for this amendment. Thank you, Mr. President.

SENATOR DISNARD: Senator Squires, would you believe that I am one of those individuals **TAPE INAUDIBLE** the state was one of many states that sued the tobacco companies because of the health problem expenses to the state, as part of this would you believe, I would believe and I hope that you would believe, that money should be used for education? My second question, if I may, are you of the opinion, and if I vote for this three cents, that is the only cigarette tax I will be requested to vote for on this floor this year?

SENATOR SQUIRES: Senator Disnard, I am not sure that I know what you believe, but what I do know is that this bill, when it passes, will go to a Committee of Conference. I would be surprised if the level of the cigarette tax remains where it is in this bill. As to your other point, the testimony yesterday, indicated that to have an effective tobacco prevention program, as a minimum, you need \$10 for every person in New Hampshire and that is going to grow over time. Maybe it should be somewhere around \$20, but somewhere in that range. There is not enough money in the fraction being proposed in the tobacco settlement. And mind you, some of that has to go for ongoing costs, some of it has to go back for reimbursements to the counties. There is not enough money as proposed to construct the type of program that we deserve. This is a supplement. It is also a very important statement of public policy.

SENATOR FRANCOEUR: Senator Squires, can you explain to me the rationale for a three cent increase and not the 25 that the House had proposed?

SENATOR SQUIRES: The committee heard a considerable discussion about the relationship of the tax increase to prevention of smoking and also its impact on the border communities, particularly, Vermont. It also



heard a discussion about the use of the cigarette tax to simply fund general fund expenditures. There was support in fact, by a number of groups that said that they could understand it if the cigarette tax was used for something like this, which is what we have here, but what we cannot understand is how it is that this mechanism is just used to support the general increase in state funding. There is enough money in the proposed amendment to fund these programs, and, then, I think that it will go to a Committee of Conference and some discussion will be made between 25 cents and three cents, depending on a lot of other things. On the other issues before us today and on the increasing need for additional funds for state government.

SENATOR GORDON: I stand before you as one who generally supports and has supported in the past, increases in the cigarette tax and have no objection to doing that as long as I believe that the purpose is appropriate. I guess that I would like to comment further on the comments of Senator Squires and what Senator Squires has said, "how will we be viewed in the future?" His concern was that we would be viewed, or this might be viewed, as an age of cynicism. I guess that I am part of the cynicism because what I am trying to figure out is why we are dealing with this bill today? The only real reason that I can find that we are dealing with this bill today is because we want to use it for a vehicle for what we are going to be doing later. Because it really makes no sense to deal with this bill today other than the fact that we might want to put an amendment of some other type on it later. The fact is that we can all sit here and agree that we need tobacco education and prevention programs, fully support them. I happen to agree as Senator Disnard stated that the money for that should come out of the settlement funds. I think that the majority of the people in the state feel that is the appropriate source of monies to do tobacco education and prevention programs rather than this bill. If anyone went to the Public Institutions, Health and Human Services Committee hearing yesterday that was the testimony that was heard yesterday that that is where the money should come from. The fact is that the monies that we generate from any increase in tobacco are going to be needed for general fund revenues this year and we all know that. We need to find additional funding for the university system. We have to find additional funding for the technical college system, we have to find money to operate the new prison in Berlin and this is a source of money. We should be waiting to find out what our needs are, our budgetary needs are, before we try to rush through a tobacco tax and say that all we are going to spend is three cents. It just doesn't make any sense at all. I mean, it is enough to make you cynical. So I am going to vote against it today because I don't want to be cynical, I want to do the right thing. I am going to vote against it today and I am going to vote to hold this bill and find out what our total needs in the state are and then make a decision as to how much the tobacco tax ought to be increased. Thank you, Mr. President.

SENATOR HOLLINGWORTH: I just wanted to briefly state that I had a meeting and I think that some of you have as well, with the attorney general in regard to the settlement money. It looks like we may have some difficulty when we get it and how much we are going to get and if we get it at all. What he basically told me that he thought that it might be April 2000 before we start to see that money. There are so many states that have to sign first and there are several states that are refusing to sign, and so it looks like that is in jeopardy. It also looks like the federal government is planning to sue the tobacco industry, and

if they do and should they prevail at that, there is the likelihood that some of those companies would go into bankruptcy, and if they went into bankruptcy and then there was a negotiation, it is highly unlikely that some of that settlement money would be renegotiated or not there at all. We have been through bankruptcy before and we know what happens when there is reorganization. For us to count on that settlement money at this point and time, I think is... while I would love to say that it is definitely going to be there, and the attorney general did say that he hopes that it is there by April 2000, it is not going to be there in time for us to start a program and do what is right now. I would ask that you support Senator Squire's amendment. I think that it is timely and I think that it is the right thing to do.

SENATOR TROMBLY: Senator Hollingworth, were you in the House of Representatives when the governor presented her budget?

SENATOR HOLLINGWORTH: I believe I was.

SENATOR TROMBLY: Did not the governor say that she was bringing in a balanced budget?

SENATOR HOLLINGWORTH: She did.

SENATOR TROMBLY: Thank you.

SENATOR LARSEN: **TAPE INAUDIBLE** setting aside these monies that could, in fact, be needed elsewhere, and suggest that the tobacco settlement monies were perhaps an area where we would look for tobacco education prevention. I have since been convinced that the statement in the settlement language prohibits some forms of advertising and prevention activities by those who would seek to inform young people of the hazards of smoking. The limitations from the tobacco settlement language are such that there would not be the ability to provide the kind of prevention programs that have been shown to be successful. I was convinced that, in fact, that tobacco revenues on a tobacco tax increase within the state, gives us much more flexibility in the way that we advertise or offer prevention programs to the young people of this state. I believe that this amendment makes some sense at the present time.

SENATOR JOHNSON: I would like to address the prevention issue. I am not certain with the statistics that I see, that throwing more money out there to try to address the prevention issue is valid. The statistics that I see, show that all of the money nationwide that is spent on prevention only accomplishes one out of five that will eventually quit smoking. I was a heavy smoker myself for 40 years, two-pack a day smoker. The final analysis was that it was my personal decision to stop smoking. I spoke to a lot of senior citizens in my district who have been smoking for many, many years. We are certainly not going to change their habit of smoking. They look at it as, a matter of fact, as a pleasure. I can't argue with that. I am also, as a school board member, I have the opportunity to talk to a lot of the students in the schools and as a matter of fact, they have more spendable income than I have, I think. In speaking with them, and I lay it out to them, as to whether increases in the prices of tobacco or the programs that will address the issue will change their habit and the answer that I have been getting is absolutely no. So again, I think that they have to make that personal choice whether or not they are going to smoke or stop smoking. Thank you.

SENATOR J. KING: I rise in support of the motion. In the committee, I think that I voted against and I wasn't quite sure what the intent was,

but I do find that the intent there is, I think, hopefully, that sooner or later, and this is going to be the first step, that we are going to designate some of this money for taking care of those who have problems with smoking cigarettes. Even if they do amend it in the House, even if they do, I hope that they do not delete this part of it, that this three cent increase will stay in there and will be used just what it is designated for here. It is a good way of telling them that this is what we want, amend it or add to it if you need to, but keep this in the bill. Thank you.

SENATOR RUSSMAN: I rise in support of the amendment for the three cents. I think that is an important message. I join with my colleague, Senator Squires, in supporting this strongly. My dad was a doctor and we have a number of doctors in the family, and frankly, cigarettes are killing my constituents and I think that three cents is certainly not too much to ask. In a bigger picture, I think that the cynicism that I think arises is that we know that part of this today is going to be the amendment that is going to be offered for the Hager/Below Plan. I think that we need to go forward with that and get a vote on that and let everyone know where we stand so that we can try and clear the air and look at the bigger picture of how we are going to resolve the educational funding process. Until that message is sent, until it is reached, we are stuck. I think that we need to get people out there and make them understand, let them understand that we are going to have to look at some alternatives.

#### **Amendment adopted.**

Senators Fraser and Johnson are in opposition to the committee amendment on HB 112.

Senator Below offered a floor amendment.

**1999-0497s**

**09/01**

#### **Floor Amendment to HB 112-FN-A**

Amend the title of the bill by replacing it with the following:

AN ACT establishing a flat rate education income tax and a statewide education property tax to fund public education and making an appropriation therefor and relative to increasing the tobacco tax.

Amend the bill by replacing all after the enacting clause with the following:

##### **1 Declaration of Need and Purpose.**

I. Recognizing the duty imposed by part II, article 83 of the New Hampshire constitution to ensure proper diffusion of knowledge and learning throughout the state, the general court finds that measures heretofore authorized for financing primary and secondary education inadequately comply with the mandate of the constitution. More particularly, the general court finds that reliance upon taxation of property assessed locally on differing bases and at differing rates:

(a) Fails to achieve the goal of a constitutionally adequate education for each of the state's youth, in that expenditures for every child's public education depend on the taxable wealth per pupil in the community where the child resides and, because of the great disparity of taxable wealth among the communities, amounts raised to meet the basic expenses of public education vary widely, thereby creating inherent inequality; and



(b) Imposes disproportionate burdens of taxation on persons having low and moderate income in each community and especially on such persons in communities having lesser amounts of taxable wealth per pupil, as in such communities heavier property tax burdens are imposed in order to raise sums sufficient to meet the costs of basic public education, against the spirit and intent of part I, article 12 and part II, articles 5, 6, and 83 of the New Hampshire constitution.

II. The purpose of this act is to more nearly satisfy the requirements of part I, article 12 and part II, articles 5, 6, and 83 of the New Hampshire constitution by establishing a system for:

(a) Financing the basic costs of public primary and secondary education sufficient to provide a constitutionally adequate education on an equal basis throughout the state, thereby redressing the presently existing inequality of educational financing and opportunity;

(b) Financing such basic costs from a source other than the local property tax alone, thereby alleviating the disproportionate burden presently borne by persons of low and moderate income; and

(c) Maintaining local control of public education by distributing adequate education funding grants to the school districts of the state.

III. The general court finds that:

(a) The general good, benefit and welfare of the state is advanced by promoting home ownership and that a total exemption of primary residences (homesteads) from the statewide education property tax is reasonable, especially when resident homeowners will be subject to the education income tax that will become the primary source of revenue to replace the local school property tax;

(b) It is reasonable and just that renters, who do not directly pay property taxes, be allowed a renter's credit against their education income tax liability that approximates the statewide education property tax paid by the owner of the rental dwelling unit;

(c) A uniform standard exemption of income from the education income tax for all taxpayers and dependents is a just, reasonable and proportionate means to assure that each taxpayer has the ability to earn a minimal subsistence level of income before being subject to the burden of income taxations, and that single heads of households are an appropriate class of people for whom an additional modest exemption from the education income tax is just and reasonable; and

(d) To promote industry, frugality and a positive work ethic, a modest exemption from the education income tax on income earned by dependents is just and reasonable.

2 New Chapters; Statewide Education Property Tax; Education Income Tax. Amend RSA by inserting after chapter 76 the following new chapters:

## CHAPTER 76-A

### STATEWIDE EDUCATION PROPERTY TAX

76-A:1 Definitions. In this chapter:

I. "Assessing official" means the assessing authority of any town, city, or unincorporated place.

II. "Commissioner" means the commissioner of the department of revenue administration.

III. "Department" means the department of revenue administration.

IV. "Dwelling" means the house or habitation for a natural person or persons consisting of a structure that provides shelter from the elements and contains at minimum a space for preparation and consumption of food and for repose on a daily basis.

V. "Education trust fund" means the education trust fund established in RSA 198:39.

VI. "Equalized assessed value" or "equalized assessed valuation" means the sum of the total valuation of each class of property in a municipality reported pursuant to RSA 21-J:34 adjusted by excluding utility property, the value of property subject to tax under RSA 82 and the value of property exempted pursuant to RSA 72:37-b, 72:62, 72:66, and 72:70 and equalized by the commissioner according to the equalization method specified in RSA 21-J:9-a.

VII. "Municipality" means a city, town, or unincorporated place.

VIII. "Homestead" or "homestead property" means the dwelling owned by a claimant or in the case of a multi-unit dwelling, the portion of the dwelling, which is used as the claimant's principal place of residence and the claimant's domicile for purposes of RSA 654:1. "Homestead" shall not include land and buildings taxed under RSA 79-A or land and buildings or the portion of land and buildings rented or used for commercial or industrial purposes. In this paragraph the term "owned" includes a vendee in possession under a land contract and one or more joint tenants or tenants in common.

IX. "Tax" means the statewide education property tax imposed pursuant to RSA 76-A:2.

X. "Taxable real estate" means property subject to tax under RSA 72 and utility property, except property subject to tax under RSA 82 and homestead property.

XI. "Tax collector" means the appointed or elected collector of taxes for a municipality.

XII. "Taxpayer" means any person subject to tax under RSA 72 and RSA 73 owning taxable real estate.

XIII. "Tax year" means the twelve month period beginning April 1 and ending March 31 of the succeeding calendar year.

XIV. "Utility property owner" means any person, partnership, limited liability company, association, corporation or other entity, their trustees or receivers appointed by any court, owning utility property.

XV. "Utility property" means all real estate, buildings and structures, machinery, dynamos, apparatus, poles, wires, fixtures of all kinds and descriptions, and pipe lines located within New Hampshire employed in the generation, production, supply, distribution, transmission, or transportation of electric power or natural gas, crude petroleum and refined petroleum products or combinations thereof, water, or sewage subject to tax under RSA 72:6, 72:7 and 72:8; provided that no electric power fixtures which would otherwise be taxed under this chapter shall be taxed under this chapter if they are employed solely as an emergency source of electric power. "Utility property" shall not include:

(a) Water and air pollution control facilities exempt from local property taxation under RSA 72:12-a;

(b) Any other property which is not subject to local property taxation.

76-A:2 Statewide Education Property Tax Imposed. A statewide education property tax is imposed on all taxable real estate in the state as follows:

I. On the effective date of this chapter the rate of tax shall be 0.6 percent of equalized assessed valuation for the first tax year.

II. For subsequent tax years, the rate of tax shall be set through legislative action each year on or before June 30, but shall continue at the prior year's rate if no action is taken by the legislature.

III. The commissioner shall equalize the rate of taxation determined pursuant to paragraphs I or II for each municipality by multiplying such rate by the municipality's equalization ratio determined according to

RSA 21-J:9-a, except that for municipalities which have undergone a total revaluation of taxable property within the prior year the commissioner shall use the actual value of such property as determined by such revaluation.

**76-A:3 Commissioner's Warrant.**

I. The commissioner shall annually calculate the portion of tax to be raised by each municipality by multiplying the equalized rate in RSA 76-A:2, IV by the total assessed value of all taxable real estate except utility property in the municipality.

II. The commissioner shall issue a warrant under the commissioner's hand and official seal for the amount computed in paragraph I plus any amount added pursuant to paragraph III to the selectmen or assessing officials of each municipality at the same time as tax rates are set under RSA 21-J:35 directing them to assess such sum and pay to the municipality for the use of the school district or districts or to the department for deposit in the education trust fund in RSA 198:39 such sums and at such times as may be prescribed for other taxes assessed by such selectmen or assessors of the municipality.

III. In calculating the tax to be assessed pursuant to the warrant, the commissioner may assess a sum not exceeding 5 percent more than the amount of the tax calculated in paragraph I for the purpose of answering any abatements that may be made.

IV. The commissioner shall report the total amounts assessed to each municipality to the governor, speaker of the house of representatives, president of the senate, state treasurer and department of education on or before September 30.

**76-A:4 Homestead Exemptions.**

I. The homesteads of qualifying taxpayers are exempt from the tax due under this chapter.

II. A qualifying taxpayer is an individual who:

(a) Is subject to the education income tax under RSA 76-B or qualifies for a local property tax exemption under RSA 72:39-a.

(b) On April 1 owns a homestead or interest in a homestead subject to the education property tax; and

(c) Files a claim certifying under the pains and penalties of perjury that such taxpayer qualifies under subparagraph (a) and (b) with the selectmen or assessing officials on or before July 30, 2000 or, in subsequent years, May 1 of the tax year for which claim is made. Claims filed after July 30, 2000 or May 1 of subsequent years shall not be considered timely for the current year, but shall be considered filed for the following tax year.

III. Upon receipt of a claim for a homestead exemption under RSA 76-A:4, the selectmen or assessing officials shall review the claim and shall grant or deny the claim in writing by September 1<sup>st</sup> following receipt of the claim. Failure of the selectmen or assessing officials to respond shall constitute acceptance of the claim. Accepted claims shall continue from year to year without necessity for refiling unless there is a change in ownership, or use of the property. Accepted claims may at any time be revoked for any tax year or portion thereof following the occurrence of one or more of the following events:

(a) The claimant fails to file a return as required under RSA 76-B:6 within one year following the close of the tax year for which exemption is claimed; or

(b) The claimant is no longer qualified for local property tax exemption under RSA 72:39-a; or

(c) The claimant is no longer qualified under the definition of homestead in RSA 76-A:1, VII due to a change in ownership or use.



IV. Claims shall be made on forms prescribed by the commissioner and provided to each municipality.

V. The following shall apply to the determination of the amount of property value exempted relative to a homestead which is part of a single tax parcel upon which is located other dwelling units not owned or occupied by the taxpayer or other significant non-homestead property:

(a) If the tax parcel includes property used for business or other nonresidential use, the exempt homestead amount shall include in addition to the actual homestead the lesser of 1,000 square feet of floor area of such non-homestead property or \$25,000 of equalized assessed valuation, except that family owned and operated farms which are not owned by a business entity or held in the name of a non-natural person shall be eligible for the full homestead exemption on all property not assessed under RSA 79-A.

(b) If the tax parcel includes other dwellings or dwelling units, the value of the homestead exemption relative to the claimed homestead shall be determined by the assessing official as follows:

(1) Divide the value of the tax parcel by the number of dwelling units; or

(2) If the square footage of each dwelling unit is known, multiply the value of the tax parcel by a fraction consisting of the square footage of the claimed homestead divided by the total square footage of all dwelling units in the parcel; or

(c) In lieu of the methods of determining the amount of homestead exemption in subparagraph (a) or (b), a taxpayer may present competent evidence of a greater proportion of exempt value to the assessing officials. In such instance the taxpayer bears the burden of proving the claimed exemption by the preponderance of the evidence.

VI. If a taxpayer purchases a homestead after April 1 for which no homestead exemption was claimed by the previous owner, the taxpayer may apply to the department for a refund of statewide education property tax previously paid on the homestead, but for which no application was made. The amount of such refund shall be apportioned according to the number of days in the tax year the taxpayer owned and occupied the homestead. Claims by taxpayers purchasing homestead property shall be filed with the inventory of property transfer required to be filed with the municipality pursuant to RSA 74:18. The selectmen or assessing officials shall, within 30 days of filing of the referral claim, accept or deny it and, if accepted, notify the department. The department shall certify the amount of such refund to the state treasurer for payment from the education trust fund created by RSA 198:39.

VII. Manufactured housing as defined in RSA 674:31 qualifying as homestead property and sited on land not owned by the claimant shall be eligible for the homestead exemption based on the value of such manufactured housing without the land.

76-A:5 Time of Assessment and Payment. Except as provided in this chapter with respect to utility property, the tax shall be deemed assessed on April 1 in each year and is payable at the same time or times as the local property tax assessed by the municipality.

76-A:6 Collection. The assessing officials for each municipality shall make a list of all taxes by them assessed against property under their hands and seals to the tax collector, directing the tax collector to collect the statewide education property taxes along with other property taxes. It shall be listed as a separate line on the municipal property tax bill.

Upon application by the assessing officials, the commissioner for good cause may extend the time for delivery of the statewide education property tax warrant.

76-A:7 Remedies for Collection. The statewide education property tax may be collected by all of the means and methods provided by law for the collection of property taxes.

76-A:8 Interest and Charges for Nonpayment. Nonpayment of the tax shall incur the same charges and interest as are imposed by law for nonpayment of local property taxes. Such charges and interest shall be payable to the municipality.

76-A:9 Abatement. The tax may be abated in the same manner as provided by law for abatement of local property taxes. Municipalities shall be reimbursed for the amount of such abatements on an annual basis, or at some more frequent interval at the discretion of the commissioner. Such reimbursement shall be payable by the state treasurer from the education trust fund created by RSA 198:39 upon certification of the amount of reimbursement by the commissioner to the treasurer.

76-A:10 Liability of Cities and Towns. Each municipality shall be liable to the state for all taxes lawfully collected in such municipality.

76-A:11 Payment to State. Each municipality shall cause its tax collector to certify such information as the state treasurer shall require, and shall cause its treasurer to pay over to the state treasurer, less any payments due to the municipalities' school district or districts from the state treasurer under RSA 198:42 and any amounts retained by the municipality under RSA 76-A:12, 25 percent of the tax assessed by the municipality on or before each of the following dates: July 1, October 1, January 1, and April 1.

76-A:12 Computation for Costs. A municipality may retain for its unrestricted use 2 percent of the amount of tax collected by it as compensation for the costs of collecting such taxes and administering homestead claims and assessments. Such amount shall not be included in the amount payable by the municipality to the state treasurer under RSA 76-A:11. In addition municipalities may keep any interest earned on taxes that are collected but not due and remitted to the state treasurer, as additional compensation for the costs of collection.

76-A:13 Extents. The state treasurer may also issue an extent for the amounts of all taxes not remitted by any municipality as provided in this chapter.

76-A:14 Supplementary Bond of Collector. Whenever the commissioner considers it necessary, a tax collector may be required to furnish a further and additional bond beyond that required by other provisions of law, with sureties, in such form and amount as the commissioner approves. The additional premium costs shall be paid by the state.

#### Utility Property

76-A:15 Utility Property; Persons Liable. The tax imposed by this chapter shall be assessed upon each person with an ownership interest in utility property, in the proportion that such person's ownership interest bears to the entirety of the ownership in the property.

76-A:16 Determination of Utility Property. On or before December 1 of the tax year, the commissioner shall determine the value of utility property for the purposes of this chapter by appraising such property at its full and true value. Notice of such determination shall be given to the taxpayer within 15 days of the commissioner's determination.

76-A:17 Returns and Declarations.

I. On or before January 15 each tax year, each utility property owner shall file with the commissioner of revenue administration, on a form

prescribed by the commissioner, a return based on the valuation for April 1 of the prior year. The return shall be accompanied by the payment of such amount as has not been prepaid in accordance with paragraph III of this section. If the return shows an additional amount to be due, such additional amount is due and payable at the time the return is filed. If such return shows an overpayment of the tax due, a credit against a subsequent payment or payments due, to the extent of the overpayment, shall be allowed.

II. On or before April 15 of each year, each utility property owner liable to pay the tax imposed by this chapter shall file with the department, on a form prescribed by the commissioner, a statement setting forth the amount of such person's ownership interest as of April 1. The statement shall include such additional information as the commissioner shall require and shall be signed by an authorized representative, subject to the pains and penalties of perjury.

III. At the time the statement required by paragraph II is filed, each person liable for the tax shall, in addition, file a declaration of the estimated tax to be assessed as of April 1 in the current taxable period, based on the tax assessed for the preceding taxable year, accompanied by payment of 1/4 of the estimated tax due. Additional payments of 1/4 of the estimated tax shall be made on June 15, September 15 and December 15.

IV. As of June 1 of each year the principal owner of utility property shall file a list of the changes made to the utility property since the prior April 1. This statement shall include such additional information as the commissioner shall require and shall be signed by an authorized representative, subject to the pains and penalties of perjury.

V. Taxes and estimated taxes not paid when due shall be subject to appropriate penalties and interest under RSA 21-J.

76-A:18 Records.

I. Every person liable for tax under this subdivision shall:

(a) Keep such records as may be necessary to determine the amount of such person's liability under this chapter.

(b) Preserve such records for the period of at least 3 years or until any litigation or prosecution under this chapter is finally determined.

(c) Make such records available for inspection by the commissioner or authorized agents, upon demand, at reasonable times during regular business hours.

II. Whoever violates any of the provisions of this section shall be subject to the penalties imposed under RSA 21-J:39.

76-A:19 Utility Property Administration.

I. The commissioner shall collect the taxes, interest, additions to tax and penalties relative to the tax on utility property owners as provided under this subdivision. The commissioner shall determine the expense of administration of this subdivision and shall certify and pay over to the state treasurer for deposit in the education trust fund established by RSA 198:39 the amount of remaining balance of the funds collected under this subdivision after the expenses of administration have been deducted.

II. The commissioner is authorized to contract for the services of utility appraisers as needed for the proper administration of this subdivision. Such contract expenses shall be deemed an expense of administration.

III. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

(a) The administration of the tax imposed on utility properties under RSA 76-A:2 and this subdivision;



(b) The valuation of utility property required under RSA 76-A:16; and

(c) The recovery of any tax, interest on tax, or penalties imposed on utility property under this chapter.

IV. The commissioner may institute actions in the name of the state to recover any tax, interest on tax, additions to tax or the penalties imposed on utility property by this chapter.

V. In the collection of the tax imposed on utility property by this chapter, the commissioner may use all of the powers granted to tax collectors under RSA 80 for the collection of taxes. The commissioner shall also have all of the duties imposed upon the tax collectors by RSA 80 that are applicable to the commissioner. The provisions of RSA 80:26 shall apply to the sale of land for the payment of taxes due under this chapter, and the state treasurer is authorized to purchase the land for the state. If the state purchases the land, the state treasurer shall certify the purchase to the governor, and the governor shall draw a warrant for the purchase price out of any money in the treasury not otherwise appropriated.

76-A:20 Utility Property Valuation Appeals. Utility property taxpayers aggrieved by the determination by the commissioner of the value of utility property pursuant to RSA 76-A:16 may appeal such valuation within 30 days of notification of such determination to the board of tax and land appeals or the superior court of the county in which the taxpayer resides or has a place of business. Appeals other than appeals of valuation shall be made according to the procedure and subject to the time limits provided for other taxes administered by the department under RSA 21-J.

76-A:21 Disposition of Taxes. All funds received by the state treasurer under the provisions of this chapter shall be deposited in the education trust fund established by RSA 198:39.

76-A:22 Local Property Taxes for Residual Expense of Education. Municipalities are hereby authorized to assess and collect property taxes locally, under general provisions of law, to meet budgeted expenses of education not funded through distributions from the education trust fund under RSA 198:39 or the moneys raised under this chapter.

76-A:23 Appeals of Homestead Exemptions.

I. Whenever the selectmen or assessing officials refuse to grant a taxpayer a homestead exemption, or grant an exemption less than the amount claimed by the taxpayer, or the taxpayer is aggrieved by a determination by the assessing official under this chapter, the taxpayer may appeal in writing, on or before March 1 following the date of notice of tax under RSA 72:1-d, to the board of tax and land appeals.

II. When a taxpayer appeals the denial of a claim to the board of tax and land appeals, the board may reverse or affirm, wholly or partly, or may modify the decision brought up for review when there is an error of law or when the board finds the selectmen's or assessing official's action to be arbitrary or unreasonable.

## CHAPTER 76-B

### EDUCATION INCOME TAX

76-B:1 Definitions. In this chapter:

I. "Consumer price index" means the most recent available consumer price index for all urban consumers published by the United States Department of Labor.

II. "Department" means the department of revenue administration.

III. "Education trust fund" means the education trust fund established in RSA 198:39.

IV. "Individual" means a natural person, including any individual who is a partner in a partnership as to such person's share of the partnership income and any individual who is a sole proprietor as to such person's income as a sole proprietor.

V. "New Hampshire modified gross income" means New Hampshire modified gross income as determined in RSA 76-B:3.

VI. "New Hampshire taxable income" means New Hampshire taxable income as determined in RSA 76-B:3.

VII. "Nonresident individual" means an individual who receives wages, self-employment, or unearned income for the taxable year from sources in this state, who maintains his or her domicile outside the state.

VIII.(a) "Resident fiduciary" means:

(1) The executor or administrator of the estate of a decedent who at death was domiciled in this state;

(2) The trustee of a trust created by will of a decedent who at death was domiciled in this state; or

(3) The trustee of a trust created by, or consisting of property of, a person domiciled in this state.

(4) The trustee of a trust the property of which includes a business organization as defined in RSA 77-A:1, with business activity in New Hampshire as defined in RSA 77-A:1.

(5) The trustee of a trust that has at least one beneficiary who is a resident individual, where, in the case of an individual, the trustee of the trust is a resident of New Hampshire or, in the case of a corporation or other business entity, has a place of business in New Hampshire.

(b) "Resident fiduciary" shall not include the trustee of any trust which is taxable as a corporation under the United States Internal Revenue Code, and shall not include a trust to the extent it is considered to be a grantor trust pursuant to sections 671-679 of the United States Internal Revenue Code.

IX. "Resident individual" means:

(a) An individual domiciled in the state; or

(b) An individual who maintains a permanent place of abode within the state and spends more than 183 days of the taxable year within the state.

X. "Taxable year" means the calendar or fiscal year or portion thereof which the taxpayer uses for federal income tax purposes under the United States Internal Revenue Code.

XI. "Taxpayer" means any individual or fiduciary subject to the provisions of this chapter.

XII. "Unearned income" means any income which is not wage or self employment income, including but not limited to capital gains, distributions from S corporations, partnerships, limited liability companies or other similar entities, dividends, interests, rents and royalties.

XIII. "United States Internal Revenue Code" means the United States Internal Revenue Code of 1986 as amended, including the United States Department of the Treasury's regulations. The forms and procedures of the United States Internal Revenue Service may be used by the commissioner of revenue administration in formulating rules for adoption under RSA 541-A. This definition shall be operative unless and until a specific statutory exception to its adoption is provided in this chapter, or until the application of one of its provisions is held to violate the New Hampshire constitution.

76-B:2 Imposition of Tax. A tax is imposed upon every resident and nonresident individual and upon every resident fiduciary at the rate of

4 percent of New Hampshire taxable income as determined in RSA 76-B:3. A 60 percent majority of those present and voting of each house of the general court shall be necessary to increase the tax rate under this section.

76-B:3 New Hampshire Taxable Income.

I. "New Hampshire taxable income" means, for any taxable year:

(a) In the case of a resident or nonresident individual, the individual's New Hampshire modified gross income, as defined in paragraph II of this section, less the following:

(1) An additional exemption of \$11,000 for the taxpayer and an additional exemption of \$11,000 for the taxpayer's spouse if a joint return is made, provided that the taxpayer or spouse is not claimed as a dependent on another taxpayer's federal income tax return or New Hampshire income tax return; and

(2) An additional exemption of \$3,000 for each dependent to which the taxpayer is entitled for federal tax purposes under the United States Internal Revenue Code, provided that the dependent is not claimed as a dependent on another person's federal income tax return or New Hampshire income tax return. A person who is claimed as a dependant under this subparagraph and who has earned income from wages, self employment income, or farm income which is taxable under this chapter, shall be entitled to an exemption of \$3,000 of such earned income on that person's New Hampshire income tax return; and

(3) An additional exemption of \$3,000 for a taxpayer entitled to a head of household status for federal tax purposes under the United States Internal Revenue Code.

(b)(1) In the case of a resident fiduciary, the amount shown as total taxable income on the fiduciary's United States fiduciary income tax return:

(A) Increased by:

(i) Any interest or dividend income on obligations or securities of another state of the United States; and

(ii) Any interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent exempted from the federal income tax; and

(B) Decreased by interest on, and dividends on securities attributable to the interest on, the direct obligations of the United States government.

(2) For a resident fiduciary with at least one beneficiary that is not either a resident individual or another resident fiduciary, the amount of income derived by application of subparagraph (1) shall be multiplied by a fraction, the numerator of which is income properly accumulated for the benefit of resident individuals or resident fiduciaries and the denominator of which is all income property accumulated.

(c) The exemptions allowed under this paragraph shall be in place for the first year of the tax only. The commissioner of revenue administration shall increase the exemption allowed in each succeeding year by an amount which equals the percentage increase in the consumer price index for a prior annual period established by rule by the commissioner, and rounded to the nearest \$10.

II. "New Hampshire modified gross income" means, for any taxable year, the amount of the taxpayer's adjusted gross income for federal income tax purposes under the United States Internal Revenue Code:

(a) Decreased by:

(1) Interest on, and dividends on securities attributable to interest on, the direct obligations of the United States government; and



(2) The amount of income taxable under this chapter which is also taxed as business profits under RSA 77-A.

(b) Increased by:

(1) Any interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent exempted from the federal income tax; and

(2) Any interest or dividend income on obligations or securities of another state of the United States.

76-B:4 Tax; When Due. Subject to the provisions of this chapter concerning the withholding of tax and estimated tax declarations, the tax imposed by this chapter shall be deemed to be assessed and due and payable on the fifteenth day of the fourth month following the close of the taxpayer's taxable year.

76-B:5 Credits. The following credits are allowed against the tax due under this chapter:

I. Taxes withheld pursuant to the provisions of this chapter.

II. Estimated tax payments made pursuant to this chapter.

III. A renter's credit of \$360 on a dwelling unit subject to RSA 76-A rented by the taxpayer as his or her primary residence for the entire year prorated for each full month of residence or alternatively, a renter's credit which is equal to the product of the local assessed value of the rented dwelling unit times the municipality's equalization ratio determined according to RSA 21-J:9-a times the rate of taxation in RSA 76-A:2 for the concurrent tax year, provided the taxpayer presents competent evidence of such value of the dwelling unit. Taxpayers claiming the alternative renter's credit shall bear the burden of proving the claimed value of the rented dwelling unit by the preponderance of the evidence. Such alternative credit claims shall be on forms prescribed by the commissioner. Taxpayers who reside in residential communities, group homes, nursing homes, manufactured housing or mobile home parks, or other facilities which are neither conventional homeowner or tenant situations may be allowed to claim a renter's credit pursuant to rules adopted by the commissioner. Persons who have claimed a homestead exemption pursuant to RSA 76-A:4 may claim a renter's credit during the same year only if the exempt homestead is sold during the tax year, in which case the renter's credit may be claimed for the period rent is paid after the date of sale of the exempt homestead. The renter's credit shall not exceed the tax due under this chapter.

IV. In the case of a resident individual, a credit calculated by:

(a) Calculating the wages, self-employment income and unearned income of the individual earned or derived from sources in another state and subject to income tax or a tax measured by income in that state;

(b) Reducing the amount calculated in subparagraph (a) by the portion of the taxpayer's claimed exemptions which bears the same relationship to the taxpayer's total claimed exemptions, as the amount calculated in subparagraph (a) bears to the taxpayer's New Hampshire modified gross income; and

(c) Multiplying the amount calculated in subparagraph (a), as reduced in subparagraph (b), by the rate of tax provided in RSA 76-B:2.

V. In the case of a nonresident individual, a credit calculated by:

(a) Reducing the taxpayer's New Hampshire modified gross income by the amount of wages and self-employment income earned by the taxpayer in New Hampshire and the amount of unearned income from New Hampshire sources;

(b) Reducing the amount calculated in subparagraph (a) by the portion of the taxpayer's claimed exemptions which bears the same re-

lationship to the taxpayer's total claimed exemptions, as the amount calculated in subparagraph (a) bears to the taxpayer's New Hampshire modified gross income; and

(c) Multiplying the amount calculated in subparagraph (a), as reduced in subparagraph (b), by the rate of tax provided in RSA 76-B:2.

#### Returns

##### 76-B:6 Returns.

I. Every resident individual and nonresident individual having New Hampshire modified gross income greater than the exemption amounts provided in RSA 76-B:3, I and every resident fiduciary shall make a return to the department of revenue administration under such rules and in such form or manner as the commissioner may prescribe, on or before the due date of the tax as provided in RSA 76-B:4.

II. A husband and wife who are both residents or who both earn wages or self employment income from sources within New Hampshire shall file a joint return for any taxable year for which such a joint return is filed for United States income tax purposes.

III. Whenever any return shows that overpayment allowable to the taxpayer exceed the amount of tax due, the department shall certify the amount of overpayment to the state treasurer for refund from the education trust fund created by RSA 198:39 or shall allow the taxpayer a credit against taxes due for a subsequent year, to the extent of the overpayment, at the taxpayer's option.

76-B:7 Information Returns. Each individual, partnership, limited liability partnership corporation, limited liability corporation, proprietorship, joint stock company, association, insurance company, business trust, real estate trust, or other form of organization, organized for gain or profit, being a resident or having a place of business in this state or being a nonresident having income derived from sources subject to tax under this chapter, in whatever capacity acting, including lessors or mortgagors of personal property, fiduciaries, employers and all officers and employees of the state or of any political subdivision of the state, having the control, receipt, custody, disposal or payment of salaries, wages, rentals or other compensation or income subject to the provisions of this chapter paid or payable during any year to any taxpayer subject to a tax under this chapter shall on such date or dates as the department shall from time to time designate, make complete return thereof to the department, in such form as the department may prescribe.

#### Withholding of Tax

76-B:8 Who Must Withhold. Every employer as defined by section 3401(d) of the United States Internal Revenue Code of 1986, as amended, employing any person within this state shall deduct and withhold upon wages paid to said employee, a tax equal to 4 percent of such wages less claimed exemptions, subject, however, to the provisions of RSA 76-B:11.

79-B:9 Time for Payment of Withheld Taxes and Filing Withheld Taxes Returns.

I. Every employer required to deduct and withhold any tax under RSA 76-B:8 shall make a quarterly return thereof to the department on or before the 15<sup>th</sup> of the first calendar month following the calendar quarter for which the return is made. However, a return may be filed on or before the last day of the first calendar month following such quarter if timely deposits have been made in full payment of such taxes due for the quarter.

II. Every employer shall pay over to the department, or to a depository designated by the department, the taxes so required to be deducted

and withheld at the same time that such employer is required, under federal income tax law and regulations, to pay over federal taxes that are required to be deducted and withheld from wages to employees.

III. The department may, if such action is necessary in any emergency where collection of the tax may be in jeopardy, require such employer to make such return and pay such tax at any time, or from time to time.

#### 76-B:10 Employer's Liability.

I. Each employer required to deduct and withhold tax under this chapter shall be liable for such tax. In the event an employer fails to withhold and pay over to the department any amount required to be withheld under RSA 76-B:8, the department shall assess such amount against the employer.

II. The amount of tax required to be deducted and withheld and paid over to the department under this chapter, when so deducted and withheld, shall be held to be a special fund in trust for the state. No employee or other person shall have any right of action against the employer in respect to any moneys deducted and withheld from wages and paid over to the department in compliance or in intended compliance with this chapter.

76-B:11 Use of Withholding Tables. At the election of the employer, the employer may deduct and withhold a tax determined on the basis of tables to be prepared and furnished by the department, which tax shall be substantially equivalent to the tax provided in RSA 76-B:8 and which shall be in lieu of the tax required in such section.

#### Estimated Tax Declarations

##### 76-B:12 Filing of Declarations.

I. On the fifteenth day of the fourth month of the current taxable year every resident individual, nonresident individual, and resident fiduciary, except as provided in paragraph II, shall furnish the department with an estimate of such portion of such person's New Hampshire taxable income for the current taxable year as will not be subject to the withholding provisions of this chapter.

II. The provisions of paragraph I are not applicable to resident individuals and nonresident individuals who reasonably anticipate receiving less than \$11,000 of New Hampshire taxable income which will not be subject to withholding during the current taxable year, or to taxpayers receiving their income from farming as defined by the United States Internal Revenue Code of 1986, as amended. The provisions of paragraph I are not applicable to resident fiduciaries who reasonably anticipate having a tax obligation under this chapter of less than \$440.

76-B:13 Payment of Estimated Tax. Each taxpayer required to file an estimated tax declaration shall include with the declaration of estimated income, payment of not less than 25 percent of the tax due thereon. Thereafter, on the fifteenth day of the sixth and ninth months of the taxable year, the taxpayer shall pay not less than 25 percent of the tax due upon said estimated income or any revised estimate thereof. The fourth installment of estimated tax shall be paid on the fifteenth day of the first month following the close of the taxable year for which the estimate was made.

#### Miscellaneous Provisions

76-B:14 Extension of Time for Returns. For good cause, the department may extend the time within which a taxpayer is required to file a return or declaration and if such return or declaration is filed during the period of extension no penalty or late payment charge may be imposed for failure to file the return at the time required by this chapter,



but the taxpayer shall be liable for interest and late payment charges as prescribed in RSA 21-J:28 and RSA 21-J:33. Failure to file the return during the period of the extension shall void the extension.

**76-B:15 Administration.**

I. This chapter shall be administered and enforced by the commissioner of revenue administration. The commissioner shall adopt rules, under RSA 541-A, necessary to insure the proper administration of this chapter which shall be consistent with the provisions of RSA 21-J:13.

II. The commissioner shall appoint such additional technical, clerical, and other personnel as the commissioner shall deem necessary to carry out the provisions of this chapter.

III. The department of revenue administration shall collect the taxes, interest, and penalties imposed under this chapter and RSA 21-J and shall pay them to the state treasurer less the administrative and enforcement costs of this chapter. The state treasurer shall deposit the remaining amount in the education trust fund established in RSA 198:39.

IV. The commissioner may institute actions in the name of the state to recover any tax, interest on tax, or the penalties imposed by this chapter and RSA 21-J, as part of the commissioner's authority to administer this chapter and to administer and enforce the tax laws of this state generally under RSA 21-J.

V. In the collection of taxes imposed by this chapter, the department may use all of the powers granted to tax collectors under RSA 80 for the collection of taxes, and it has all of the duties imposed upon the tax collectors by RSA 80 including the optional tax sale procedure under RSA 80:58-86. The following shall also apply:

(a) The provisions of RSA 80:26 apply to the sale of land for the payment of taxes due under this chapter, and the state treasurer is authorized to purchase the land for the state.

(b) If the state purchases the land, the state treasurer shall certify the purchase to the governor and the governor shall draw a warrant for the purchase price out of any money in the treasury not otherwise appropriated.

VI. The commissioner shall have the authority to subpoena witnesses, records, and documents, as needed, and to administer oaths to those testifying at hearings. The department and the taxpayer may take the depositions of witnesses residing within and without the state pertaining to a matter under this chapter, in the same way as depositions are taken in civil actions in the superior court.

**76-B:16 Fees.** Fees of witnesses shall be the same as those allowed to witnesses in the superior court. In the case of witnesses summoned by the commissioner, it shall be considered as an expense of administration of this chapter.

**76-B:17 Notice.** Any notice required by this chapter to be given by the department to a taxpayer shall be made by mail to the last known address of the taxpayer and in the case of hearings shall be given at least 10 days before the date thereof.

**76-B:18 Preference.** The taxes and interest imposed by this chapter have preference in any distribution of the assets of the taxpayer, whether in insolvency or otherwise.

**76-B:19 Dissolutions, Withdrawals, and Statements of Good Standing.**

I.(a) No employer organized under any law of this state may transfer property to its shareholders pursuant to RSA 293-A:14.05(a) or to its members and managers pursuant to RSA 304-C:58 until all taxes required to be withheld by the employer under this chapter, and any interest and penalties that related thereto, have been fully paid and a

certificate of dissolution shall have been obtained from the commissioner of revenue administration that no returns, tax required to be withheld, tax interest, or penalties for taxes administered by the department are due and unpaid.

(b) In order to transfer property to its shareholders pursuant to RSA 293-A:14.05(a) or its members or managers pursuant to RSA 304-C:58, an employer shall submit a written request containing the complete corporate or limited liability company name and identification number and accompanied by a non-refundable fee of \$30 to the commissioner of revenue administration. This fee shall be deposited into the general fund. If, after reviewing the employer's records, the commissioner determines that no returns, tax required to be withheld, interest, or penalties for taxes administered by the department are due and unpaid, the commissioner shall prepare a certificate in accordance with subparagraph (a).

II. In order to obtain a statement for withdrawal, in accordance with RSA 293-A:15.20(b)(6) or RSA 304-C:68, an employer shall submit a written request containing the complete employer name and identification number and accompanied by a non-refundable fee of \$30 to the commissioner of revenue administration. This fee shall be deposited into the general fund. If, after reviewing the employer's records, the commissioner determines that no returns, tax required to be withheld, interest, or penalties for taxes administered by the department are due and unpaid, the commissioner shall prepare a statement for withdrawal for the purposes required under RSA 293-A:15.20(b)(6) or RSA 304-C:68.

III. In order to obtain a statement that it is in good standing with the department of revenue administration, an employer shall submit a written request containing the complete employer name and identification number and accompanied by a non-refundable fee of \$30 to the commissioner of revenue administration. This fee shall be deposited into the general fund. If, after reviewing the employer's records, the commissioner determines that no returns, tax required to be withheld, interest, or penalties for taxes administered by the department are due and unpaid, the commissioner shall prepare a statement of good standing.

#### 76-B:20 Liens for Tax.

I. If any employer required to deduct and withhold a tax under this chapter neglects or refuses to pay the same after demand, the unpaid amount, including any late payment charge and interest together with any costs that may accrue in addition thereto, shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to such employer. Such liens shall arise at the time assessment and demand is made by the department and shall continue until the liability for the full amount of the lien is satisfied or becomes unenforceable. Such lien against personal property shall be valid as against any subsequent mortgagee, pledgee, purchaser or judgment creditor when notice of such lien and the sum due has been placed on record by the department with the secretary of state and in the office of the town clerk where the taxpayer resides. Such lien against real property shall be valid as against any subsequent mortgagee, pledgee, purchaser or judgment creditor when notice of such lien and the sum due has been placed on record by the department with the register of deeds for the county in which the property subject to the lien is situated. In the case of any prior mortgage on real or personal property so written as to secure a present debt plus future advances by the mortgagee to the mortgagor, the lien herein provided, when notice thereof has been properly recorded, shall be subject to such prior mortgage

unless the department also notifies the mortgagee in writing of the recording of such lien, in which case any indebtedness thereafter created from mortgagor to mortgagee shall be junior to the lien herein provided for.

II. The lien created by paragraph I shall be released upon satisfaction of the amount of the lien or upon a finding by the commissioner that the lien has become unenforceable, or if there is furnished to the department a bond with surety approved by the department in a penal sum sufficient to equal the amount of the lien, said bond to be conditioned upon the payment of the amount of the lien upon a final determination or adjudication of the employer's liability therefor.

III. The lien created by paragraph I may be foreclosed in the case of real estate agreeably with the provisions of law relating to foreclosure of mortgages on real estate, and in the case of personal property agreeably with the provisions of law relating to the foreclosure of security interests in personal property.

IV. To secure payment of the taxes, fees, charges and interest imposed by this chapter and RSA 21-J, the department may avail itself of any other provision of law relating to liens for taxes.

76-B:21 Additional Returns. When the commissioner has reason to believe that a taxpayer has failed to file a return or to include any part of New Hampshire modified gross income in a filed return, the commissioner may require the taxpayer to file a return or a supplementary return showing such additional information as the commissioner prescribes. Upon the receipt of the supplementary return, or if none is received, within the time set by the commissioner, the commissioner may find and assess the amount due upon the information that is available. The making of such additional return does not relieve the taxpayer of any penalty for failure to make a correct original return or relieve the taxpayer from liability for interest imposed under RSA 21-J:28 or any other additional charges imposed by the commissioner. This section shall not be construed to modify or extend the statute of limitations provided in RSA 21-J:29.

76-B:22 Corrections. Each taxpayer shall report to the commissioner of any change in the amount of the taxpayer's New Hampshire modified gross income as finally determined by the United States Internal Revenue Service with respect to any previous year for which the taxpayer has made a return under this chapter. Such a report shall be made not later than 6 months after the taxpayer has received notice that such change has finally been determined. Notwithstanding any other provision of law, a taxpayer reporting a correction pursuant to this section shall be given notice by the department of any adjustment to the tax due with respect to such correction within 6 months of the filing of the report.

76-B:23 Taxpayer Records. Every taxpayer shall:

I. Keep such records as may be necessary to determine the amount of the taxpayer's liability under this chapter;

II. Preserve such records for the period of 3 years or until any litigation or prosecution hereunder is finally determined;

III. Make such records available for inspection by the commissioner or authorized agents, upon demand, at reasonable times. Whoever violates the provisions of this section shall be subject to the penalties imposed under RSA 21-J:39.

76-B:24 Severability. If any provision or provisions of this chapter, is or are declared unconstitutional or inoperative by a final judgment, order or decree of the supreme court of the United States or of the supreme court of New Hampshire, the remaining provisions of said chapter shall not be affected thereby.



3 Cigarette Tax. Amend RSA 78:7 to read as follows:

78:7 Tax Imposed. A tax upon the retail consumer is hereby imposed at the rate of ~~[37]~~ 40 cents for each package containing 20 cigarettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes, on all tobacco products sold at retail in this state. The payment of the tax shall be evidenced by affixing stamps to the smallest packages containing the tobacco products in which such products usually are sold at retail. The word "package" as used in this section shall not include individual cigarettes. No tax is imposed on any transactions, the taxation of which by this state is prohibited by the Constitution of the United States.

4 New Subdivision; Disposition of Tobacco Tax Revenues; Special Fund. Amend RSA 78 by inserting after section 31 the following new subdivision:  
Disposition of Revenues

78:32 Disposition of Revenues. Three million dollars of the gross revenues collected under this chapter shall be deposited at the end of each fiscal year beginning June 30, 2000 in the tobacco use prevention and cessation fund established in RSA 78:33.

78:33 Tobacco Use Prevention and Cessation Fund. There is established within the office of the state treasurer a tobacco use prevention and cessation fund. Money from this fund shall be continually appropriated to the department of health and human services for tobacco use prevention and cessation programs and shall be allocated as follows:

	<u>Percentage</u>	<u>Amount</u>
I. Tobacco use prevention community programs and grants	25	\$750,000
II. Tobacco use prevention school programs and grants	18	\$540,000
III. Tobacco use prevention state-wide programs and grants	15	\$450,000
IV. Tobacco use cessation programs	15	\$450,000
V. Tobacco use prevention and cessation counter marketing	18	\$540,000
VI. Evaluation	5	\$150,000
VII. Administration and enforcement	4	\$120,000

5 New Subparagraph; Special Fund. Amend RSA 6:12, I by inserting after subparagraph (vvv) the following new subparagraph:

(www) Three million dollars of the annual gross revenues of the tobacco tax collected under RSA 78, which shall be credited as provided in RSA 78:32 to the tobacco use prevention and cessation fund established under RSA 78:33.

6 Applicability. Section 4 of this act shall apply to all persons licensed under RSA 78:2. Such persons shall inventory all taxable tobacco products in their possession and file a report of such inventory with the department of revenue administration on a form prescribed by the commissioner within 20 days after the effective date of this act. The tax rate effective April 1, 1999, shall apply to such inventory and the difference, if any, in the amount paid previously on such inventory and the current effective rate of tax shall be paid with the inventory form. The inventory form shall be treated as a tax return for the purpose of computing penalties under RSA 21-J.

7 New Subdivisions; State Aid for Educational Adequacy; Education Trust Fund; Excess Education Property Tax Payment; Commission. Amend RSA 198 by inserting after section 37 the following new subdivisions:

State Aid for Educational Adequacy; Education Trust Fund

198:38 Definitions. In this subdivision:

I. "Municipality" means a city, town, or unincorporated place.

II. "School district" means school district as defined in RSA 194:1 or RSA 195:1.

III. "Elementary school" means a school with any of the grades kindergarten through 8.

IV. "High school" means a school with any of the grades 9 through 12.

V. "Base expenditure per pupil" means the amounts calculated in accordance with RSA 198:39, II.

VI. "Average base cost per pupil of an adequate education" means the amount as calculated in accordance with RSA 198:39, III.

VII. "Weighted pupils" means resident pupils who have been assigned to one or more of the following classifications:

(a) An elementary pupil, which shall include kindergarten pupils, 1.0.

(b) A high school pupil, 1.2.

(c) An elementary pupil who is eligible to receive a free or reduced-priced meal shall receive an additional weight of .14.

VIII. "Educationally disabled child" means an educationally disabled child as defined in RSA 186-C:2, I.

IX. "Consumer price index" means the consumer price index for all items for urban consumers for the United States published by the United States Department of Labor.

X. "Special education costs" means the cost of special education and educationally related services provided to educationally disabled children reported by school districts on the MS-25 form less any federal IDEA funds, state special education catastrophic aid, and special education medicaid reimbursement received by the districts.

XI. "Average daily membership in attendance" means average daily membership in attendance as defined in RSA 189:1-d, III.

XII. "Average daily membership in residence" and "resident pupils" mean the average daily membership in residence as defined in RSA 189:1-d, IV.

XIII. "Transportation costs" means the costs of transporting pupils to and from school and other school activities reported by school districts on the MS-25 form.

198:39 Education Trust Fund Created.

I. The treasurer shall establish an education trust fund in the treasury. Moneys in such fund shall not be used for any purpose other than to distribute adequate education grants to municipalities' school districts pursuant to RSA 198:42, make catastrophic aid payments under RSA 186-C:18, III(d), reimburse municipalities for costs of collection and administration under RSA 76-A, and make taxpayer refunds under RSA 76-A:4 and RSA 76-B:6, III, and for such other educational appropriations, as the legislature may from time to time designate. The state treasurer shall deposit into this fund immediately upon receipt:

(a) The full amount of the statewide education property tax payments from municipalities pursuant to RSA 76-A:11.

(b) The full amount of the education income tax payments from the department of revenue administration pursuant to RSA 76-B:15.

(c) All moneys due the fund in accordance with RSA 284:21-j.

(d) All moneys in the local education betterment fund established in 1998, 389:16.

(e) Any other moneys appropriated from the general fund.

II. The education trust fund shall be nonlapsing. The state treasurer shall invest that part of the fund which is not needed for immediate distribution in short-term interest-bearing investments. The income from these investments shall be returned to the fund.

198:40 Methodology for Calculating the Cost of an Adequate Education.

I. For the biennium ending June 30, 2001, the department of education shall use financial and student membership data reported to it by school districts for the 1996-97 school year and statewide education improvement and assessment scores for 1997 in making the calculations required by this subdivision. For each school district the number of elementary pupils eligible to receive a free or reduced-priced meal shall be based on the district percentage of such eligible pupils reported to the department of education on October 1, 1997.

(a) For fiscal year 2000, the department of education shall adjust the average base cost per pupil of an adequate education, special education costs, and transportation costs by the change in the consumer price index between January 1997 and January 1998 and the average daily membership in residence by 2.2 percent.

(b) For fiscal year 2001, the department of education shall adjust the average base cost per pupil of an adequate education, special education costs, and transportation costs for fiscal year 2000 by the change in the consumer price index between January 1998 and January 1999 and the average daily membership in residence by 2.2 percent.

(c) If the general court makes no change in the method of calculating the cost of an adequate education for subsequent fiscal years, the average base cost per pupil for the previous fiscal year shall be adjusted by the change in the consumer price index between the January immediately preceding the beginning of the fiscal year of distribution and the second preceding January. In making the calculations required by this subdivision in subsequent fiscal years, the department of education shall use the average daily membership in residence, special education costs, and transportation costs for the second preceding school year and the district percentage of pupils eligible to receive a free or reduced-priced meal reported to the department of education on October 1 of the second preceding calendar year.

II. The department of education shall calculate the base expenditure per pupil for each school district that operates an elementary school by subtracting from the total expenditures at the elementary school level, tuition to other school districts or approved educational programs, capital costs and debt service on such costs, special education costs, food service costs, transportation costs, adult and continuing education, summer school, and federal revenues not otherwise deducted. For each school district, this amount shall be divided by the average daily membership in attendance at the elementary school level to obtain the base expenditure per pupil.

III. The cost of an adequate education shall be calculated as follows:

(a) The department of education shall identify those school districts where an average of 40 to 100 percent of the elementary pupils enrolled in the grades tested on the day testing began achieved a scaled score equivalent to performance at the basic level or above in all areas tested in the statewide education improvement and assessment program administered pursuant to RSA 193-C.

(b) From the school districts identified in subparagraph III(a) of this section, the department of education shall then identify those school districts that have the lowest base expenditure per pupil as calculated pursuant to paragraph II and which represent, as nearly as possible, 50 percent of the average daily membership in attendance at the elementary level of the school districts identified in subparagraph III(a) of this section.

(c) The department of education shall calculate the average base cost per pupil of an adequate education by multiplying the base expenditure per pupil of each school district identified in subparagraph III(b)



of this section by the average daily membership in attendance at each of the selected school districts, and then adding the results across all districts selected. This sum shall then be divided by the total average daily membership in attendance at the elementary school level of all of the selected school districts.

IV. The weighted average daily membership in residence for each district shall be calculated by combining the district's elementary average daily membership in residence with its weighted high school average daily membership in residence and the district's additional average daily membership in residence resulting from elementary pupils eligible to receive a free or reduced-priced meal. The weighted average daily membership in residence of pupils statewide shall be calculated by combining the weighted average daily membership in residence of each school district in the state.

V. For each fiscal year, the statewide cost of an adequate public education for all pupils shall be calculated by multiplying the average base cost per pupil of an adequate education by the weighted average daily membership in residence of pupils statewide and then adding 99.5 percent of total special education costs statewide plus 70 percent of total district transportation costs statewide.

#### 198:41 Determination of Adequate Education Grants.

I. Except for municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of revenue administration shall determine the amount of each adequate education grant for each municipality as follows:

(a) Multiply the average base cost per pupil of an adequate education by the weighted average daily membership in residence for the municipality;

(b) Add to the product of subparagraph (a), 70 percent of the municipality's apportioned transportation cost;

(c) Add to the sum of subparagraph (b), 99.5 percent of the municipality's apportioned special education cost;

(d) Subtract from the sum of subparagraph (c) the amount of the education property tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76-A:3, IV for the next tax year.

II. For municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of revenue administration shall determine the amount of the adequate education grant for each municipality as the lesser of the following 2 calculations:

(a) The amount calculated in accordance with paragraph 1 of this section; or

(b) The total amount paid for items of current education expense as determined by the department of education minus the amount of the education property tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76-A:3, IV for the next tax year.

III. The department of education shall determine the amount of each adequate education grant for each municipality by October 1 of each year for the next fiscal year.

#### 198:42 Distribution Schedule of Adequate Education Grant.

I. Beginning with the fiscal year ending June 30, 2001 and for each fiscal year thereafter, the adequate education grant determined in RSA 198:41 shall be distributed to each municipality's school district or school districts from the education trust fund as follows:

(a) Payment of 1/6 of the grant on or before August 1; and

(b) Payment of 1/12 of the grant on or before the first of each other month except June.

II. The general court is constitutionally obligated to fund the cost of an adequate education, and there are hereby appropriated the funds necessary to make the payments required under RSA 198:41. The governor is authorized to draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

III. The department of revenue administration shall certify the amount of each grant to the state treasurer and direct the payment thereof to the school district or districts. When a payment of a grant is made to a school district, the municipality on whose behalf the payment is made, shall receive notification from the state treasurer of the amount of the payment made to its school district or districts.

198:43 Additional Education Expenditures. Nothing in this subdivision shall prevent the assessment and collection of property taxes locally, under general provisions of law, to meet budgeted expenses of education not funded through distributions from the education trust fund under RSA 198:42.

198:44 Use of Funds for Education Purposes.

I. Annually, each school district shall appropriate an amount that equals or exceeds the amount necessary to fund an adequate education for the pupils in that district. Notwithstanding any other provision of law, in the event a school district fails to appropriate at least the required amount, that amount shall be assessed and collected by the municipality, appropriated to the school district, and expended for educational purposes in accordance with paragraph IV without a vote of the school district.

II. On or before June 30 of each year, the individual with fiscal responsibility in each municipality shall submit a statement to the commissioner of revenue administration that the funds collected by the municipality pursuant to RSA 76:8 have been paid over to the school district or districts to be expended for educational purposes in accordance with paragraph IV. The statement shall include the following: "*I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete.*"

III. If a municipality uses any part of the funds collected pursuant to RSA 76:8 for non-educational purposes, the municipality shall pay to the school district an amount equal to the portion of funds used for such non-educational purposes.

IV. The funds collected by municipalities pursuant to RSA 76:8 and the funds received from the state pursuant to RSA 198:42 shall be appropriated by a school district only for current education expenses or transfers to reserves or trusts funds and shall not be used for any other purpose. When setting any local property tax rates pursuant to RSA 21-J:35, the commissioner shall treat any adequate education funding received or to be received by a school district during each fiscal year, whether pursuant to RSA 76-A:3 or RSA 198:42, as revenue to the district to fund officially approved appropriations certified under RSA 21-J:34, II and RSA 198:4-a.

V. On or before June 30 of each year, the individual with fiscal responsibility in each school district shall submit a statement to the commissioner of revenue administration that an amount of money that equals the amount necessary to fund an adequate education for the pupils in that district was used in accordance with paragraph IV. The statement shall include the following: "*I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete.*"

198:45 Duties of the Department of Education and the Board of Education.

I. The department of education shall, on or before September 30 of each year, collect from the school districts final data concerning all aspects of student attendance for the school year ending June 30 of that year necessary to establish the average daily membership, average daily membership in residence, and weighted average daily membership in residence, including the municipality of residence for each pupil for that year. The department of education shall submit a report by December 31 to the speaker of the house of representatives and the senate president to be used for purposes of determination by the legislature of the appropriation to the education trust fund. A copy of such report shall, at the same time, be given to the department of revenue administration.

II. The board of education shall adopt rules pursuant to RSA 541-A necessary to the proper administration of this subdivision.

Adequate Education and Education  
Financing Reform Commission

198:46 Adequate Education and Education Financing Reform Commission Established; Membership.

I. There is hereby established an adequate education and education financing reform commission which shall be composed of 22 members as follows:

(a) Three house members, including one member of the education committee, one member of the finance committee, and one member of the minority party, appointed by the speaker of the house.

(b) Three senators, including one member of the education committee, one member of the finance committee, and one member of the minority party, appointed by the senate president.

(c) Four members appointed by the governor, one of whom shall be an elementary or secondary special education teacher, one of whom shall be a primary teacher who does not teach special education, and one of whom shall be a member of the business community.

(d) The commissioner of the department of education, or designee.

(e) The chancellor of the university system of New Hampshire or designee.

(f) The commissioner of the regional community-technical college system.

(g) One member from the state board of education, appointed by the chairperson of the state board of education.

(h) One member from a special education advocacy organization, appointed by such organization; and

(i) Seven members who shall be agreed to and jointly appointed by the governor, the president of the senate, and the speaker of the house consisting of the following:

(1) One local school board member, recommended by the New Hampshire School Boards Association.

(2) One school administrator, recommended by the New Hampshire School Administrators Association.

(3) One special education administrator at the elementary or secondary school level, recommended by the New Hampshire Association of Special Education Administrators.

(4) Two parents of school-age children, one of whom shall be the parent of a child with an educational disability.

(5) One member from the business community, who shall be associated with the School to Work Initiative.

(6) One school business official, recommended by the New Hampshire Association of School Business Officials.



II. The commission shall elect a chairperson from among its membership and shall form subcommittees necessary to perform its duties. The chairperson shall determine the frequency of meetings at its first meeting.

III. The members of the commission shall serve without compensation, provided that legislative members of the commission shall receive mileage at the legislative rate while attending to the duties of the commission, and provided that the parent members of the commission shall be reimbursed for travel expenses associated with their duties on the commission.

IV. In order to ensure that all students are provided an adequate education, the duties of the commission shall be as follows:

(a) Determine and recommend the costs of an adequate education for all students in New Hampshire by determining and calculating adjustments for individual school districts based on yearly inflation, cost of living variances, diseconomies of scale, transportation variability, demographics, including for school districts with a disproportionate number of students who are economically disadvantaged or have educational disabilities, and such other factors as deemed relevant.

(b) Determine and recommend the amount of state aid, including building aid, to be distributed to cities and towns based upon the cost of an adequate education as set forth in subparagraph (a) and the method for distributing the state aid.

(c) Recommend changes in policy and procedure in the areas of educational improvement and accountability.

(d) Recommend interim and permanent processes to ensure adequate planning and implementation at the local and state level of special education and educationally related services, including planning for and development, on an interagency basis, of local school based options for pupils who have been placed in alternative or separate schools who could be placed in appropriate less restrictive options if available.

V. The commission shall be divided into the following policy subcommittees: adequacy and cost, educational improvement and accountability, and special education funding.

VI. The commission shall report its findings and recommendations no later than December 1, 2000. The report shall include, for each recommendation, proposed implementation schedules with timelines, specific steps, agencies and persons responsible, and resources needed. Where feasible, all plans, measures and initiatives shall be proposed as legislation or regulation so that they will have the force of law. All recommendations and plans shall be designed to be fully implemented no later than September 1, 2004.

VII. The department of justice, department of revenue administration, department of education, and department of health and human services shall provide the commission with assistance.

8 New Subparagraphs; Special Education; Catastrophic Aid Payments Constitutionally Obligated. Amend RSA 186-C:18, III by inserting after subparagraph (c) the following new subparagraphs:

(d) For each fiscal year beginning with the fiscal year ending June 30, 2000, 0.5 percent of the total statewide special education costs as defined in RSA 198:38, IX shall be appropriated from the education trust fund established in RSA 198:39 to the department of education to assist those school districts which, under rules adopted by the state board of education, qualify for emergency assistance in meeting special education catastrophic costs pursuant to this section.

(e) The general court is constitutionally obligated to fund the cost of an adequate education, and there are hereby appropriated for the biennium ending June 30, 2001, the funds necessary to make the payments required in this section. The governor is authorized to draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

9 Appropriation. The sum of \$150,000 for the fiscal year ending June 30, 2000, is hereby appropriated for the purposes of the commission established in RSA 198:46 as inserted by section 7 of this act. This sum shall be nonlapsing until June 30, 2001. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

10 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:7, I to read as follows:

I. If a cooperative school district was organized prior to July 1, 1963, during the first 5 years after the formation of a cooperative school district each preexisting district shall pay its share of all capital outlay costs and *all* operational costs *in excess of the amount determined necessary to provide an adequate education under RSA 198:40* in accordance with either one of the following formulas as determined by a majority vote of the cooperative district meeting:

11 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:14, I(b) to read as follow:

(b) The commissioner of revenue administration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum, in accordance with RSA 21-J:35, which may be used as a setoff against the amount appropriated when it appears to the commissioner of revenue administration such adjustment is in the best public interest. *The commissioner of revenue administration shall apply the total amount of all adequate education grants received pursuant to RSA 198:42.*

12 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:18, III(e) to read as follows:

(e) The method of apportioning [~~the~~] *all* operating expenses *in excess of the amount determined necessary to provide an adequate education under RSA 198:40*, of the cooperative school district among the several preexisting districts and the time and manner of payment of such shares. Home education pupils who do not receive services from the cooperative school district, except an evaluation pursuant to RSA 193-A:6, II, shall not be included in the average daily membership relative to apportionment formulas.

13 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:18, IX to read as follows:

IX. The organization meeting of a cooperative school district shall be called to order by the chairperson of the cooperative school district planning board, or by the clerk-treasurer thereof, who shall serve as temporary chairperson for the first order of business which shall be the election of a moderator and of a temporary clerk, by ballot, who shall be qualified voters of the district. From and after the issuance of the certificate of formation by the board to the date of operating responsibility of the cooperative school district, such district shall have all the authority and powers of a regular school district for the purposes of incurring indebtedness, for the construction of school facilities and for such other functions as are necessary to obtain proper facilities for a complete program of education. When necessary in such interim, the school board of the cooperative school district is authorized to prepare

a budget and call a special meeting of the voters of the district, which meeting shall have the same authority as an annual meeting, for the purpose of adopting the budget, making necessary appropriations, and borrowing money. Whenever the organization meeting is held on or before April 20 in any calendar year, no annual meeting need be held in such calendar year. Sums of money raised and appropriated at the organization meeting or any interim meeting prior to the first annual meeting shall be forthwith certified to the commissioner of revenue administration and the state department of education upon blanks prescribed and provided by the commissioner of revenue administration for the purpose, together with a certificate of estimated revenues, so far as known, and such other information as the commissioner of revenue administration may require. The commissioner of revenue administration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum which may be used as a setoff against the amount appropriated when it appears to the commissioner such adjustment is in the best public interest. ***The commissioner of revenue administration shall apply the total amount of all adequate education grants received pursuant to RSA 198:40 as a setoff against the amount appropriated.*** The commissioner of revenue administration shall certify to the state department of education the total amount of taxes to be raised for said cooperative school district and the state department of education shall determine the proportional share of said taxes to be borne by each pre-existing school district and notify the commissioner of revenue administration of its determination. Upon certification by the commissioner of revenue administration the selectmen of each town shall seasonably assess the taxes as provided by law. The selectmen shall pay over to the treasurer of the cooperative district such portion of the sums so raised as may reasonably be required according to a schedule of payments needed for the year as prepared by the treasurer and approved by the cooperative school board, but no such payment shall be greater in percentage to the total sum to be raised by one local district than that of any other local district comprising such cooperative school district.

14 New Paragraph; Rulemaking; State Treasurer. Amend RSA 6:3-a by inserting after paragraph VII the following new paragraph:

VIII. Administrative functions under RSA 198:39 and RSA 76-B.

15 New Subparagraph; Education Trust Fund. Amend RSA 6:12, I by inserting after subparagraph (www) the following new subparagraph:

(xxx) Money received under RSA 76-A, RSA 76-B, and from the sweepstakes fund, which shall be credited to the education trust fund under RSA 198:39.

16 Gender Reference Change. Amend the introductory paragraph of RSA 21-J:3 to read as follows:

In addition to the powers, duties, and functions otherwise vested by law, including RSA 21-G, in the commissioner of the department of revenue administration, ~~he~~ ***the commissioner*** shall:

17 Duties of Commissioner. Amend RSA 21-J:3, XIII to read as follows:

XIII. Equalize annually the valuation of the property in the several towns, cities, and unincorporated places in the state by adding to or deducting from the aggregate valuation of the property ~~[as assessed]~~ in towns, cities, and unincorporated places such sums as will bring such valuations to the true and market value of the property, including the equalized value of property formerly taxed pursuant to the provisions of RSA 72:7; 72:15, I, V, VII, VIII, IX, X, and XI; 72:16; 72:17; 73:26; 73:27; and 73:11 through 16 inclusive, which were relieved from taxa-



tion by the laws of 1970, 5:3; 5:8; 57:12; and 57:15, the equalized valuation of which is to be determined by the amount of revenue returned in such year in accordance with RSA 31-A, and by making such adjustments in the value of other property from which the towns, cities, and unincorporated places receive taxes *or payments in lieu of taxes* as may be equitable and just, so that any public taxes that may be apportioned among them shall be equal and just. *In carrying out the duty to equalize the valuation of property, the commissioner shall follow the procedures set forth in RSA 21-J:9-a.*

18 Duties of Commissioner; Electronic Funds Transfer. RSA 21-J:3, XXI is repealed and reenacted to read as follows:

XXI. Except as provided in RSA 78-A:8, have authority to require the payment of any tax, interest, or penalty, or the refund or abatement thereof by electronic funds transfer.

19 New Paragraphs; Duties of Commissioner. Amend RSA 21-J:3 by inserting after paragraph XXIV the following new paragraphs:

XXV. Petition the board of tax and land appeals to issue an order for reassessment of property pursuant to the board's powers under RSA 71-B:16 - 19 whenever, the valuation of property for equalization purposes in a particular city, town, or unincorporated place is disproportional to the valuation for equalization purposes in other cities, towns, or unincorporated places in the state.

XXVI. Have authority subject to appropriation to establish the filing of any return or document by electronic data submission and to enter into contractual agreements with vendors to provide the means by which such electronic data is submitted to the department. The commissioner may by rule or otherwise establish procedures necessary to implement this section.

20 Division of Property Appraisal; Department of Revenue Administration. RSA 21-J:9 is repealed and reenacted to read as follows:

21-J:9 Division of Property Appraisal. There is established within the department the division of property appraisal, under the supervision of a classified director of property appraisal who shall be responsible for the following functions, in accordance with applicable laws:

I. Assisting and supervising municipalities and appraisers in appraisals and valuations as provided in RSA 21-J:10 and RSA 21-J:11.

II. Appraising state-owned forest and recreation land under RSA 227-H and RSA 216-A.

III. Annually determining the total equalized valuation of properties in the cities and towns and unincorporated places according to the requirements of RSA 21-J:9-a.

IV. Preparing a standard appraisal manual which may be used by assessing officials, and holding meetings throughout the state with such officials to instruct them in appraising property.

21 New Section; Equalization Procedure. Amend RSA 21-J by inserting after section 9 the following new section:

21-J:9-a Equalization Procedure. The following procedures shall apply in determining the equalization of property within the cities, towns, and unincorporated places as required by RSA 21-J:3, XIII:

I. The commissioner shall annually conduct a sales-assessment ratio study which shall include arm's length sales or transfers of property that occurred 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made.

II. In determining the arm's length sales or transfers that are included in the sales-assessment ratio study, the commissioner may use

a randomly selected sample of such sales and transfers the size of which shall be determined by the total taxable parcels in the city, town, or unincorporated place.

III. If less than 2 percent of the total taxable parcels in a city, town, or unincorporated place has been transferred by an arm's length sale or transfer during the 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made or the commissioner determines the sales are unrepresentative of the property within the municipality, the commissioner may choose one or more of the following options:

(a) Include appraisals of any of the taxable property of such city, town, or unincorporated place in the sales-assessment ratio study. Such appraisals shall be based on full and true market value pursuant to RSA 75:1 and shall be performed by department appraisers. The property to be appraised shall be selected by the commissioner.

(b) Consider recent equalization ratio activity in adjoining cities, towns, or unincorporated places.

(c) Include arm's length sales or transfers in the city, town, or unincorporated place, within 2-1/2 years preceding April 1 of the year preceding the tax year for which such equalization is made.

IV. The commissioner shall use the inventory of property transfers authorized by RSA 74:18 in determining the equalized value of property and may consider such other evidence as may be available to the commissioner on or before the time the final equalized value is determined.

22 Appraisals of Property for Ad Valorem Tax Purposes. RSA 21-J:11 is repealed and reenacted to read as follows:

21-J:11 Appraisals of Property For Ad Valorem Tax Purposes.

I. Every person, firm, or corporation intending to engage in the business of making appraisals on behalf of a municipality for tax assessment purposes in this state shall notify the commissioner of that intent in writing. No person, firm, or corporation engaged in the business of making appraisals of taxable property for municipalities and taxing districts shall enter into any contract or agreement with any town, city, or other governmental division without first submitting the proposed contract or agreement to the commissioner for examination and approval and submitting to the commissioner evidence of financial responsibility and professional capability of personnel to be employed under the contract.

II. The commissioner, at no expense to the municipality, shall monitor appraisals of property and supervise appraisers as follows:

(a) Assure that appraisals comply with all applicable statutes and rules;

(b) Assure that appraisers are complying with the terms of any appraisal contract;

(c) Review the accuracy of appraisals by inspection, evaluation, and testing, in whole or in part, of data collected by the appraisers; and

(d) Report to the governing body on the progress and quality of the municipality's appraisal process.

III. The commissioner shall adopt rules under RSA 541-A relative to the provisions required of all contracts for appraisal services and the methodology for inspection, evaluation, and testing of data for the purposes of appraisal monitoring.

23 Exemption from Rulemaking; Interest and Dividends Tax Deleted; Education Income Tax Added. Amend RSA 21-J:13-a to read as follows:

21-J:13-a Exemption From Rulemaking Requirement. The commissioner shall be exempt from adopting, as rules pursuant to RSA 541-A,

the requirements on the department's tax filing forms for the business profits tax, business enterprise tax, and [~~interest and dividends~~] **education income** tax.

24 Distraint; Taxes Collected or Withheld. Amend RSA 21-J:28-d to read as follows:

21-J:28-d Distraint. Upon neglect or refusal of any person or corporation to pay the taxes assessed upon them **or taxes collected or withheld by them**, the department may distraint the **goods, chattels**, personal estate, property interest, right or credit of such person or corporation.

25 Income Tax; Penalty for Failure to File. Amend RSA 21-J:31 to read as follows:

21-J:31 Penalty for Failure to File. Any taxpayer who fails to file a return when due, unless an extension has been granted by the department, shall pay a penalty equal to 5 percent of the amount of the tax due or \$10, whichever is greater, for each month or part of a month during which the return remains unfilled. The total amount of any penalty shall not, however, exceed 25 percent of the amount of the tax due or \$50, whichever is greater. This penalty shall not be applied in any case in which a return is filed within the extended filing period as provided in **RSA 76-B:12, [RSA 77-18-b,]** RSA 77-A:9, RSA 77-E:8, RSA 83-C:6, RSA 83-E:5 or RSA 84-A:7, or the failure to file was due to reasonable cause and not willful neglect of the taxpayer. The amount of the penalty is determined by applying the percentages specified to the net amount of any tax due after crediting any timely payments made through estimating or other means.

26 Income Tax; Substantial Understatement Penalty. Amend RSA 21-J:33-a, I to read as follows:

I. If there is a substantial understatement of tax imposed under **RSA 76-B, [RSA 77,]** RSA 77-A, RSA 77-E, RSA 78-A, RSA 78-C, RSA 82-A, RSA 83-C, or RSA 83-E, for any taxable period, there shall be added to the tax an amount equal to 25 percent of the amount of any underpayment attributable to such understatement.

27 Reports Required. Amend the introductory paragraph of RSA 21-J:34 to read as follows:

The governing body of each city, town, unincorporated town, unorganized place, school district, and village district, and the clerk of each county convention shall submit to the commissioner of revenue administration the following reports necessary to compute and establish **the statewide education tax rate and** the tax rate for each city, town, unincorporated town, unorganized place, school district, village district, and county. The commissioner shall adopt rules under RSA 541-A establishing the form and content of these reports:

28 New Paragraph; Reports Required. Amend RSA 21-J:34 by inserting after paragraph XIV the following new paragraph:

XV. A report filed by the assessing officials of each city, town, and unincorporated place shall certify sales-assessment information necessary for the department to conduct the annual sales-assessment ratio study required by RSA 21-J:9-a. This report shall be filed within 45 days after receipt from the department.

29 Board of Tax and Land Appeals; Authority. Amend RSA 71-B:5, II to read as follows:

II. To hear and determine [~~any~~] appeals **by towns** relating to the [~~equalization of valuation performed~~] **equalized valuation of property determined** by the commissioner of revenue administration pursuant to RSA 21-J:3, XIII. Any town aggrieved by [~~an~~] **its** equalized valuation as determined by the commissioner of revenue administration must appeal to the board in writing within 30 days of [~~the town's notifica-~~]



tion] notice of [the] *its final* equalized valuation by the commissioner. *The board shall hear and make a final ruling on such appeal within 45 days of its receipt by the board. The board's decision on such appeal shall be final and not appealable. For the purposes of the statewide education property tax only, the board's decision on equalized valuation may be appealed to the supreme court. Such appeal shall be filed with the clerk of the supreme court within 10 days after the date the decision is mailed by the board to the town. The supreme court shall give the appeal priority on the court calendar and may hold a special session to consider such appeal if it considers such action necessary. Decisions issued by the supreme court prior to September 30 shall be effective immediately and shall be used by the commissioner in determining the tax to be raised by each municipality under RSA 76-A:3. The supreme court may adopt rules relative to this appeal process.*

30 New Paragraph; Order for Reassessment. Amend RSA 71-B:16, IV to read as follows:

IV. When a complaint is filed with the board alleging that all of the taxable real estate or taxable property in a taxing district should be reassessed or newly assessed for any reason, provided that such complaint must be signed by at least 50 property taxpayers or 1/3 of the property taxpayers in the taxing district, whichever is less[-]; *or*

*V. When the commissioner of revenue administration files a petition with it pursuant to RSA 21-J:3, XXV.*

31 Reference to Interest and Dividend Tax Deleted; Education Income Tax Added. Amend RSA 72:34, II to read as follows:

II. For those exemptions having income or asset limitations, the assessing officials may request true copies of any of the following, as needed to verify eligibility. Any documents submitted shall be considered confidential, handled so as to protect the privacy of the applicant, and returned to the applicant at the time a decision is made on the application. The documents are:

- (a) Federal income tax form; and
- (b) ~~[State interest and dividends tax form; and~~
- (e) Property tax inventory form filed in any other town; *and*
- (c) Education income tax form.

RSA 359-C shall not apply to the documents requested for verification under this section.

32 New Section; Inventory of Property Transfers. Amend RSA 74 by inserting after section 17 to following new section:

74:18 Inventory of Property Transfers.

I. In order to properly equalize the value of property under RSA 21-J:3, XIII, an inventory of property transfers shall be filed with the department of revenue administration and with the municipality where the property is located for each transfer of real estate or interest in real estate. Each form may include the following information:

(a) The buyer and seller's names and post transaction addresses and the name and address of a contact person if the buyer or seller is a trust or corporation.

(b) A description of the exact location of the property by town, street, and the assessor's map, lot, and block number.

(c) The acreage included in the sale.

(d) An accurate description of the property included in the sale, the neighborhood where the property is located, and the type and style of the property sold.

- (e) The buyer's ownership interest in the property.
- (f) The sale price, date of transfer, and the amount mortgaged.
- (g) The description of the type of transfer that has taken place.
- (h) The amount of personal property included in the sale price.
- (i) Whether the property was previously occupied and by whom, whether the property will serve as the buyer's primary residence, and whether the buyer claims a homestead exemption pursuant to RSA 76-A:4.
- (j) The financing arrangements made to purchase the property to be answered at the option of the buyer.
- (k) Whether any concessions were made in the sale.
- (l) Whether the property was in current use.
- (m) Whether land use taxes were considered in the sale.
- (n) The buyer's dated signature certifying that the information indicated on the form is true.

II. The inventory of property transfers required by this section shall be filed with the department of revenue administration and with the municipality where the property is located by the purchaser, grantee, assignee, or transferee, no later than 30 days from the recording of the deed at the register of deeds or transfer of real estate, whichever is later. Persons required to file the inventory of property transfers who willfully fail to file or willfully make false statements on the forms shall be guilty of a violation.

III. No deed, recording a transfer of real estate or any interest in real estate, executed before October 1, 1995, shall be required to comply with this section.

IV. Failure to comply with this section shall not be construed to cloud title.

V. Any information provided to the department pursuant to this section shall be exempt from the right-to-know law, RSA 91-A.

33 Distraint; Taxes Collected or Withheld. Amend RSA 80:8 to read as follows:

80:8 Distraint. Upon neglect or refusal of any person or corporation to pay the taxes assessed upon them *or taxes collected or withheld by them*, the collector may distraint the goods, chattels, personal estate, property interest, right, or credit of such person or corporation.

34 Reference Change. Amend RSA 193:1, I(c) to read as follows:

(c) The relevant school district superintendent has excused a child from attendance because the child is physically or mentally unable to attend school, or has been temporarily excused upon the request of the parent for purposes agreed upon by the school authorities and the parent. Such excused absences shall not be permitted if they cause a serious adverse effect upon the student's educational progress. Students excused for such temporary absences may be claimed as full-time pupils for purposes of calculating state aid under RSA 186-C:18 and ~~[RSA 198:27-37]~~ *basic education block grants under RSA 198:41*.

35 Reimbursement Anticipation Notes; Version Effective Until July 1, 1999. Amend RSA 198:20-d to read as follows:

198:20-d Reimbursement Anticipation Notes. Notwithstanding any other provision of law to the contrary, a school district may incur debt in anticipation of reimbursement under RSA 186-C:18 *and under RSA 198:42*. The governing body, after receiving authorization for borrowing from the legislative body, may elect to recognize the proceeds of the borrowing as revenue for property tax rate setting purposes by providing written notification, prior to September 1, to the commissioner of the department of revenue administration stating the specific amount of borrowing to be recognized as revenue.

36 Reimbursement Anticipation Notes; July 1, 1999 Version. Amend RSA 198:20-d to read as follows:

198:20-d Reimbursement Anticipation Notes. Notwithstanding any other provision of law to the contrary, a school district may incur debt in anticipation of reimbursement under RSA 186-C:18 *and under RSA 198:42*. The governing body, after notice and public hearing, may elect to borrow such funds and to recognize the proceeds of the borrowing as revenue for property tax rate setting purposes by providing written notification to the commissioner of the department of revenue administration stating the specific amount of borrowing to be recognized as revenue. Any borrowing under this section shall be exempt from the provisions of RSA 33, relative to debt limits.

37 Sweepstakes. RSA 284:21-j is repealed and reenacted to read as follows:

284:21-j Establishment. The state treasurer shall credit all moneys received from the sweepstakes commission, and interest received on such moneys, to a special fund from which the treasurer shall pay all expenses of the commission incident to the administration of this subdivision and RSA 287-E. Any balance left in such fund after such expenses are paid shall be deposited in the education trust fund established under RSA 198:39.

38 Transition. As of July 1, 1999, all funds, from any source derived, which would be distributed as foundation aid shall be deposited in the education trust fund under RSA 198:39, including the \$62,000,000 appropriated under 1998, 389:16, II.

39 Removing Reference to Foundation Aid. Amend RSA 198:21, V to read as follows:

V. No pupil counted by any school district for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be ~~[included in average daily membership for the purposes of foundation aid or]~~ counted for the purposes of grants pursuant to RSA 198:22.

40 Removing Reference to Foundation Aid. Amend RSA 198:22, V to read as follows:

V. No pupil counted by any school for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be ~~[included in average daily membership for the purposes of foundation aid or]~~ counted for the purpose of grants pursuant to RSA 198:21.

41 Bond. To provide initial funding for start-up costs including equipment and computer purchases and other administrative and enforcement costs under RSA 76-B:15, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding an amount certified by the commissioner of revenue administration and for said purposes may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6-A. Payments of principal and interest of the bonds and notes shall be made from the education trust fund established in RSA 198:39. The bonds shall be 5-year bonds.

42 First Taxable Year of Income Tax. The first taxable period under RSA 76-B, as inserted by section 2 of this act, begins January 1, 2000, and ends December 31, 2000. Persons liable for a tax during the first taxable period and who do not report the payment of federal income taxes on a calendar year basis are entitled to such proportion of the exemptions allowed in RSA 76-B as the period bears to their taxable year. The determination of the tax shall be made under rules adopted by the commissioner of revenue administration under RSA 541-A, con-



sistent with the general purposes and provisions of RSA 76-B. Persons required to make information returns for the first taxable period shall make them on a proportional basis in such form as the commissioner requires. For such first taxable period under RSA 76-B, all penalties, but not interest, shall be waived for underpayment of estimated taxes and insufficient withholding for calendar year 2000.

#### 43 Returns for Certain Taxes.

I. All persons who are liable for a tax under RSA 77 as of December 31, 1999, who thereafter are no longer liable for a tax under RSA 77 because of the passage of this act shall make a return of such taxes due the commissioner of revenue administration in such manner and on such forms as the commissioner shall prescribe in rules adopted under RSA 541-A. The administrative provisions of RSA 77 shall remain in effect to permit the collection of taxes upon income taxable under RSA 77 which is received by persons subject to taxation under that chapter through December 31, 1999, and to permit the distribution of that revenue. Persons who are liable for a tax under RSA 77 who do not report the payment of federal income taxes on a calendar year basis are entitled to such proportion of the exemptions allowed in RSA 77 as the reporting period bears to their taxable year.

II. An amount equal to the difference between the official estimate for interest and dividends for fiscal year 2000 and the commissioner of revenue administration's best estimate of actual interest and dividend's revenue collections for fiscal year 2000 shall be withdrawn from the education trust fund and deposited into the general fund on June 30, 2000.

44 Temporary Rules. The commissioner of revenue administration shall adopt temporary rules without regard to RSA 541-A for the first year of implementation of this act.

45 Transition Year Education Funding; District Foundation Aid Increased. In order to provide sufficient time to implement the provisions of this act and to assure adequate educational funding on as equal and equitable basis as is practicable during the transition period preceding full implementation of the provisions of this act, therefore, notwithstanding the provisions of RSA 198:36, IV, for the fiscal year beginning July 1, 1999 the foundation amount shall be \$5,708 per weighted pupil.

46 Special Rate for Property Tax Payments; Tax Year April 1, 2000. Notwithstanding the provisions of RSA 76:15-a and RSA 76:15-b for the tax year beginning April 1, 2000, the partial payment of taxes assessed shall be computed by taking the prior year's assessed valuation times  $\frac{1}{2}$  of the previous year's municipal tax rate;  $\frac{1}{2}$  of the previous year's county tax rate; and  $\frac{1}{2}$  of the previous year's local school tax rate as adjusted by the commissioner of revenue administration by deducting therefrom the amount of  $\frac{1}{2}$  of the estimated reduction in local school tax rate, if resulting from the implementation of this act and adding thereto  $\frac{1}{2}$  of the statewide education property tax rate for the taxable year; provided, however, that whenever it shall appear to the selectmen or assessors that certain individual properties have physically changed in valuation, they may use the current year's appraisal in place of the prior year's valuation to compute the partial payment.

#### 47 Tax Equity and Efficiency Commission Established.

I. There is established a tax equity and efficiency commission to study issues relating to tax fairness and administrative implementation arising from the passage of this act which may be appropriate for further legislative action.

II. The commission shall consist of the following members:

(a) Eight house members, including the chairperson or vice-chairperson of the finance committee, the chairperson or vice-chairperson of the education committee, and at least 3 members of the minority party, appointed by the speaker of the house.

(b) Five senators, including the chairperson or vice-chairperson of the finance committee, the chairperson or vice-chairperson of the ways and means committee, the chairperson or vice-chairperson of the education committee, and at least 2 members of the minority party, appointed by the senate president.

(c) The governor or designee.

(d) The commissioner of the department of revenue administration or designee.

(e) The commissioner of the department of education or designee.

(f) The state treasurer or designee.

(g) One representative appointed by the New Hampshire Municipal Association.

(h) One representative appointed by the School Administrators Association.

(i) One representative appointed by Claremont Lawsuit Coalition.

(j) One representative appointed by the New Hampshire Society of Certified Public Accountants.

(k) One public member, appointed by the governor.

III. The commission shall study issues arising under this act relating to tax fairness and administrative implementation which may be appropriate for further legislative action. As part of its study, the commission shall consider:

(a) The most appropriate means for evaluating the following types of property for taxation purposes:

(1) Utility property.

(2) Railroad property.

(3) Nuclear station property.

(b) The fairness of the renters credit under the income tax.

(c) The determination of the homestead exemption for owners of multi-unit dwellings or parcels with mixed uses.

(d) Whether a resident fiduciary responsible for payment of property taxes should qualify for the homestead exemption.

(e) The income tax treatment of pension payments received in lieu of social security payments or pension payments from pensions to which the taxpayer's contributions to the pension were previously taxed.

(f) The proper income tax treatment of military personnel on active duty residing out-of-state.

(g) The property tax treatment of non-conventional single owner or unusual residential situations such as nursing homes, dormitories, group homes, residential communities, condominiums and cooperatives.

IV. The members of the commission shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first named senate member and shall be held within 30 days of the effective date of this section.

V. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before September 15, 1999 and on or before December 31, 1999.

48 Position Established; Appropriations.

I. To carry out the financial and educational reporting requirements of this act, there is hereby established within the department

of education a full-time temporary position of systems development specialist IV, labor grade 25, for the 15 month period ending June 30, 2000.

II. The sum of \$69,500 is hereby appropriated to the department of education to fund the position created in paragraph I, including salary, benefits, rent, supplies, and travel. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

III. The sum of \$100,000 for the biennium ending June 30, 2001 is hereby appropriated to the department of education to fund the costs necessary to upgrade school districts' computer systems to carry out the reporting responsibilities of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

IV. The sum of \$1,000,000 for the biennium ending June 30, 2001, is hereby appropriated to the department of revenue administration to fund the costs necessary to upgrade municipalities' computer systems to carry out the financial purposes of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

V. The sum of \$9,000,000 for the fiscal year ending June 30, 2000 and \$5,695,000 for fiscal year ending June 30, 2001 is hereby appropriated to the department of revenue administration to fund the costs necessary to implement this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

VI. The sum of \$500,000 for the biennium ending June 30, 2001 is hereby appropriated to the department of revenue administration to fund the costs of establishing a personal and business income tax forecasting and policy analysis unit to provide information to the tax equity and efficiency commission, the governor and the legislature. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

VI. The sum of \$253,700,000 is hereby appropriated from the education trust fund created under RSA 198:39 to the department of education for the fiscal year ending June 30, 2000 for the purpose of funding the requirements of RSA 198:27-37.

49 Repeal. The following are repealed:

I. RSA 9:13-g, relative to educational funding commitments to local communities.

II. RSA 76:3, relative to a state property tax.

III. RSA 77, relative to the taxation of income.

IV. RSA 77-A:4, I, relative to an adjustment to business profits.

V. RSA 77-B, relative to the commuter income tax.

VI. RSA 78:20, relative to the applicability of the tobacco tax.

VII. RSA 83-D, relative to the nuclear station property tax.

VIII. RSA 198:1-3, relative to school district taxes.

IX. RSA 198:15-i-15-p, relative to the kindergarten incentive program, kindergarten aid program and alternative kindergarten programs.

X. RSA 198:21, V, relative to the applicability of foundation aid and child benefit service grant recipients in the calculation of average daily membership.

XI. RSA 198:22, V, relative to the applicability of foundation aid and dual enrollment grant recipients in the calculation of average daily membership.



XII. RSA 198:27-37, relative to foundation aid and alternative foundation aid.

XIII. RSA 261:52-a, relative to notice that the interest and dividends tax may be due.

XIV. RSA 391:3, relative to the taxation of common trust funds under RSA 77.

XV. 1998, 389:15, 16 and 17 relative to educational funding commitments and funding for local education betterment.

50 Effective Date.

I. RSA 76-A, as inserted by section 2 of this act shall take effect April 1, 2000.

II. Section 36 of this act shall take effect July 1, 1999 at 12:01 a.m.

III. Paragraph XII of section 49 shall take effect July 1, 2000.

IV. The remainder of this act shall take effect July 1, 1999.

**1999-0497s**

### AMENDED ANALYSIS

I. This bill increases the tobacco tax by 3 cents. The bill dedicates \$3,000,000 of annual tobacco tax gross revenues to a tobacco use prevention and cessation fund.

II. The bill establishes a flat rate education income tax and a statewide property tax to fund public education.

III. This bill:

(a) Establishes an educational adequacy and education financing reform commission.

(b) Establishes a system for calculating and disbursing state grants for educational adequacy for fiscal years 2000 and 2001 by multiplying the average base cost per pupil of an adequate education by the weighted number of the average daily membership in residence of pupils statewide and adding to that sum 70 percent of total district transportation costs and 99.5 percent of the district's costs for special education less any federal or state moneys received to offset such special education expenses.

(c) Appropriates funds to the commission for the purposes of this bill.

(d) Provides that all expenses related to catastrophic special education are constitutionally mandated and shall be borne by the state.

IV. The bill also makes appropriations to the department of education and the department of revenue administration for the purposes of the bill.

SENATOR BELOW: Last December 2<sup>nd</sup> we all stood together in this room and took an oath of office in which we swore to support the constitution of this state and nation and we each affirmed our sacred commitment to faithfully and impartially perform all duties incumbent upon us as state Senators according to the best of our abilities and agreeably to the constitution of this state of New Hampshire. Having taken that oath of allegiance under Part II, Article 84 of our constitution, we do today begin a great debate about how we will best discharge our duty under the immediately preceding Article 83 of our constitution, the Encouragement of Literature clause. That clause, at its core states that: "Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; ... it shall be the duty of the legislators...in all future periods of this government, to cherish ... all ... public schools." Over 5 years ago in Claremont I our Supreme Court found that this clause "imposes a duty on the state to provide a constitutionally adequate education to every child in the public schools in New Hampshire and to guarantee adequate funding." Fifteen months ago, in Claremont II our Supreme

Court held "that the present system of financing elementary and secondary public education in New Hampshire is unconstitutional." Because "the state's duty to provide for an adequate education is constitutionally compelled" and because the present funding system is unconstitutional and may not remain in effect beyond next Wednesday, we must face our duty to select a new funding system for public education that does not violate the constitution. In their opinion of June 23, 1998, the Supreme Court noted that "the language of our constitution commands that taxes be no less than fair, proportional, and reasonable." Thus is our duty clarified. Some have suggested that our court has somehow overstepped its authority in its Claremont decisions, and that we are therefore not bound to fulfill our constitutional duty to fund an adequate education with fair and equitable state taxes. I strongly disagree. The court has simply been doing its job of interpreting, applying, and upholding the constitution in cases that come before it. Part II, Article 72-a of our constitution vests the highest judicial power of the state in the Supreme Court. In 1871 in Farnum's Petition, the court noted that "Our plain and simple duty is to declare and apply the law, remembering that the constitution is the paramount law..." In 1998 our Supreme Court ruled in a manner that takes us back to our constitutional origins. In that same 1871 case the Court noted that "the constitution enjoins the duty to provide for a public education, in very general and comprehensive terms, on magistrates and legislators as one of paramount public importance." The court then further noted that local school districts were "created by the legislature as a means and instrument in carrying out the public duty in reference to public instruction laid upon the legislature by the constitution." That was noted over 100 years ago. As early as 1829 the Supreme Court opined that "the taxes imposed by the legislature for the support of schools ... are, in their nature, state taxes, and ..." should be "laid, not merely proportionally, but in due proportion, so that each individual's just share, and no more, shall fall upon him" regardless of town of residence. In 1879 in *Morrison v. Manchester*, the Supreme Court noted that "the supreme legislative power, vested in the Senate and House of Representatives ... includes the power of taxation, which is the power of causing a constitutional division to be made, among the members of the community, of the public expense, of which each one is, by the twelfth article of the bill of rights, bound to contribute his share." Back in 1829 the court opined that "it is very manifest, that 'his share,' here means, his proportional part of the expense, according to the amount of his taxable estate." What then is a person's "taxable estate" as it was understood at that time and what is it today? The estate of a person is their wealth, which at the time was best reflected in their real property, measured by their real property, which was the basis for most income and production early in the 19<sup>th</sup> century. In fact, the tax law in place at the time our state constitution was adopted in 1784 was established "so that every person may be compelled to pay in proportion to his income..." Thus agricultural lands were taxed based on what they produced, by bushel of grain, tons of hay or barrels of cider, while "all mills, wharf's and ferry's ... houses, warehouses and other buildings..." were taxed at 1/12<sup>th</sup> of their annual net income." Homes and land that did not produce an income were not subject to the so-called property tax. Should we today continue to measure a person's wealth and estate by the real property that they own, when so much of our income and investments are otherwise engaged? What is each citizen's just and proportionate share of the

cost of public education today? In 1951 the Supreme Court was asked their opinion about a series of narrowly based taxes. The Court warned that narrowly based taxes may "fail to promote an equal or honest division of the common burden." They concluded that "What tax or combination of taxes will rest upon the broadest base with greatest practical equality is one which the legislature must decide. ... But the dangers of discrimination, which may result from a selection of numbers of small classes, cannot be disregarded." This floor amendment to HB 112 embodies the most refined version to date of HB 109, the Hager/Below/Fernald plan. We believe it represents the most equal and honest division of the common burden of public education as is practical. We propose that a personal income tax replace the property tax as the primary source of funding for public education today. We all pay our property taxes for schools out of our income, unless we don't have the income and then people have to dip into their savings or sell off their land or home to pay their property taxes. And that, at its essence is the problem with the property tax system: it is only loosely and inconsistently correlated with ability to pay. The court observed in their decision in Claremont II, the wide disparity that exists between towns. We can observe it even within the same cooperative school districts where children sit side by side, and yet their parents pay two, three or four times or more difference in taxes for the same education. In one community with a \$100,000 home, a person might pay \$800 for a school system, the same school system that in another community, somebody is paying \$2,400 for on the same value house. That is one of our problems. One of the solutions is a statewide property tax which is uniform in rate and equal in valuation throughout the state; however, as that has been examined, there is a realization that that would have severe, negative consequences on many communities and, in particular, we have heard the concern about low income residents in property rich towns, which is a real concern, because as it turns out, many of our property rich towns are rich because of natural assets that have attracted many vacation homes; lakes and mountains and the resident population in many cases have relatively low incomes. There are low per capita incomes in property rich towns. Less frequently in this debate, I have heard concern about the poor in property poor towns where the problem is even worse. The poor in many of our property poor towns, particularly the elderly, the single elderly, who have been widowed, are often paying 15-20 percent or more of their income to pay their property taxes. We have a problem in New Hampshire which is, we have a growing disparity in wealth between the rich and the poor. The rich are getting richer and the poor are getting poorer relative to each other, both within our communities, between our communities, and as individuals. Our over reliance on the property tax has created a cycle where property poor towns have to tax at an ever greater rate to maintain their school spending and municipal spending while values decline and people do not want to move into those communities. While property rich communities attract people who want to live there who want better lives. **TAPE CHANGE** relative to their people population. So we have this spreading between communities, but we also have it between individuals, because the property tax system is, at its core, a regressive tax. In New Hampshire, we tax the poor with the property tax on average at about three times the rate as a portion of their income that we tax the very rich. The bottom 20 percent of taxpayers in this state pay about 7 percent of their income in property taxes while the top one



percent with more total income than the bottom 40 percent only pay about 2 percent of their income in property taxes. In many ways, people have argued that we have a New Hampshire advantage by not having an income tax. It attracts people of high income, of considerable wealth to New Hampshire because we are to some extent, a tax haven. The tax burden on the highest income residents of the state is among the lowest in the nation. But, if they are not paying in proportion to their income, then somebody is paying more, and that somebody is many of our residents in the property poor towns who are paying more than their fair share, which is why the court has ruled that we must change. The income tax is the most proportionate and reasonable tax to pay for education because it directly reflects what we get out of education; with an income tax, a flat rate income tax, people will give back to support education in proportion to what they get out of education, both as individuals and as a society, which is stability to be productive and to earn a good income. We know that education today is the key to our future prosperity. Those regions and places in the world that do the best job at educating the youth will be those regions and areas that achieve the greatest prosperity, because it is through education, the acquisition of knowledge and learning, that we are able to increase our productivity; to do more with less and to ensure our continued prosperity and competitiveness in a growingly competitive global economy where knowledge and the management of information is just so essential. So why do we ask people who get the least out of education to give back the most proportionally? That is just not right. In talking about the New Hampshire advantage and some of the recent press reports I have heard comments that we have the lowest per capita tax rate in the nation. That is simply not true. There is confusion here and I would like to clarify it. Our tax burden, state and local taxes combined, per capita is about 28<sup>th</sup> or 29<sup>th</sup> in the nation. We are in the middle third, not even the lowest third, in terms of per capita state and local taxes; however, because we have very high average incomes, about seventh or eighth in the nation, we do have a very low tax burden as a percent of income. We are about forty-eighth in the nation according to the latest statistics in *Governing Magazine*. But if high-income residents are taxed very lightly compared to other states, then low-income residents end up with an above average tax burden per capita. The New Hampshire advantage is not equally or fairly spread around. There is a lot of fear and confusion about the idea of an income tax. People say that they do not want an income tax. We do not want a sales tax. We do not want any new taxes and that is an understandable and natural reaction. Certainly, there is cause for concern that we will grow government unnecessarily, that we will end up by changing our traditional tax structure, to set loose forces and constraints that we fear that will do us damage. Part of that fear is that tax rates will continue to rise. The irony is that New Hampshire, perhaps more than most states, has seen this problem of rising tax rates because of our over reliance on the property tax. Over the past decade that we have data for, the last eight years that we have data for, we have seen very little growth on our property tax base. We saw the property tax decline in the early 90's, only to slowly recover; and not in one of those single eight years for which we have data, has the property tax base, property tax values, the sum of equalized values in the state, grown as fast as the combination as pupil growth, plus inflation. That has meant that in order to maintain spending per pupil on inflation adjusted basis, property tax rates have had

to rise year after year after year. That drives taxpayers nuts. So they legitimately fear that a new tax will rise in accordance. The irony to this is that most other states in the nation that rely on an income tax as a major source of funding are actually able to cut many of their tax rates because, unlike the property tax base in this state, where we have the highest property tax burden as a percent of income in the nation. Incomes are going very strongly. In the last two years that we have data, adjusted gross income in New Hampshire is like 8.1 and 9.1 percent, respectively. It seems logical to me, that we should relate our investment in education with what we get out of education, which is this concept of productivity and rising prosperity income so that we create this positive feedback as we invest in education and ensure growth and income; we give back in proportion to that growth, and we even create the possibility of further reducing property taxes and not only maintain, but possibly lowering other tax rates rather than seeing them grow. We have the opportunity to create a new New Hampshire advantage, which is to be the first state in the nation to enact an income tax and then dedicate it to education. Dedicate it. No other state has tried to do that. Many people have said that other states that have tried to put in an income tax didn't necessarily cut property taxes. Well, almost no states that I know have actually implemented an income tax with the purpose of cutting property taxes, it just hasn't been done. It is usually done for general state sources, but the reality is, that every other state in the nation, and all but Alaska, have either an income tax or a sales tax, have lower property taxes than we do as a percent of income. There is one other state that did try to replace the property tax, the bulk of the local property tax, the school property tax with state broad-base tax. That is the state of Michigan. Early in this decade, they voluntarily chose to repeal the existing property tax system. They solved the gross disparity and inequity that was caused by over reliance on a local property tax system for funding education. They voluntarily repealed the property tax system and they ended up enacting a combination of increased sales tax and a statewide property tax that cut the local property tax by over half. The interesting thing about that experience is, not only did they succeed in cutting drastically, their reliance on local property taxes, but in the process, they cut their overall tax burden from approximately 20<sup>th</sup> in the nation in 1992 before they made this change, to approximately 39<sup>th</sup> in the nation in 1995. So I just wanted to point out, that in the one case of a state that has chosen to use broad-base tax as state local taxes to reduce local property taxes and replace local property taxes, they not only succeeded in cutting the property taxes and maintaining that reduction, they succeeded in lowering the overall tax burden. New Hampshire can be unique; we can do it different. We can do it in a manner in which Michigan did and maintain our historic overall frugality and relatively low tax burden, but do it with fair taxation. There is some concern or questions about the level of funding in this bill. I am not getting into the details of the bill. If people have questions, we can do that, I think; really in many ways the debate today is the principles and the concepts of what revenue sources we are going to use for funding education. But the bell of the revenue structure does anticipate being able to fund on the order of \$900 to a billion dollars of the cost of K-12 education. Now we don't actually have the information from what school districts are budgeting for this upcoming year, but in speaking with Mark Joyce from the New Hampshire School Administrator's Association, they have tried to compile the numbers of what voters have

approved for budgets. It looks like we are pretty much on course for the voters to end up with about \$1.5 billion, \$1,500 million in K-12 public school expenditures for the next school year. That is our tradition of local voter control and using the local voters to evaluate and adopt the local budgets. Nine hundred million to one billion dollars will only be 60 percent to 2/3 of those total expected costs for the next year. Some have said that is too much. I would observe that there are about 15 states in the latest available data from the 1996-97 school year. There are 15 states that are funding 60 percent or more of the costs of K-12 education costs. That is about 1/3 of the states. I wouldn't mind being in the top third in state share of funding for K-12. We have also had concerns about New Hampshire spending too much. That we are above average in some way. Again, according to the latest data that I have seen, New Hampshire is about 3 percent above the national average in total spending per pupil, but we are lower than all of the New England states and even all of the Northeastern states. Virginia is the closest state with lower spending per pupil from the 1996-97 school year. We have had concerns about teacher's salaries. New Hampshire's teacher's salaries in the 1996-97 school year were about 7 percent below the national average and in all of the New England states, but for Maine. Some people have asked why is there a property tax in this bill? Because there is a statewide property tax with the total Homestead exemption on owner occupied primary residences so that the statewide property tax in effect applies to commercial, industrial and second home properties. Part of this is that we are trying to move off of the property tax system, and we have to find the right balance that achieves this greatest fairness and equity as possible. This bill has sort of been in circulation now for about 14 months. In the process of shopping it through the House last year, and this summer and fall through the several campaigns, where we put it out to the voters, where we talked about it, and through the last few months of review, we have tried to refine it so that we find the right balance between fairness, equity and efficiency and ease of administration. It is a difficult balance to strike. But the property tax is in there because, if it wasn't in there, we would be creating a major shift in tax burden from that commercial, industrial, second home sector onto New Hampshire residents that pay the income tax. I think that we need to somewhat approximate the reduction in property taxes that are anticipated with the increased burden of an income tax, and yet at the same time, try to provide property relief across the board. What this bill does is provide funding at about \$5,000 per pupil. Funding them through approximately \$950 million to \$1 billion would be to replace with state sources of funds about \$12 to \$13 of the local school property tax rate. In most communities and new communities, that is, on average, something close to half of the total property tax bill. So for the homeowners, we would be replacing something like half of their total property tax bill with the income tax that the people would now pay. For commercial, industrial and second homeowners, we would be cutting their local share of the school tax by something like \$12 per thousand and instead they would pay a \$6 statewide tax rate. So on average, they would also enjoy about a \$6 per thousand reduction. I think that we would change the dynamic of New Hampshire's economy in a positive way because of the reduction and burden in property values, we would see a rise in property values that would allow the remaining property taxes to not keep growing, to stabilize and perhaps, even reduce. We would see increased revenue from the owners



of commercial properties because of the lower property taxes, which would flow back through to higher income. We would capture something in the form of \$60 - \$70 million in income taxes now being paid by out-of-state residents who work in New Hampshire that are flowing to our neighboring states. That is worth something very significant for the New Hampshire economy. We would capture something on the order of \$40 to \$50 million in income taxes that are now being paid to the federal treasurer. That is because individuals, particularly of higher income levels who itemize their deductions, are able to deduct their state income tax as well as their state property tax from your federal taxable income and reduce their federal tax liability. So someone in the top tax bracket at the federal level, instead of paying a 4 percent state income tax, would effectively be only paying a 2.4 percent margin rate. I could go on all day. I won't in fear that I am losing some of you. I will wrap it up momentarily. But that is all significant. I think that part of the confusion is people are hearing 4 percent tax rate and that sounds like a lot, although most people are paying well over 4 percent of their income in property taxes. Because of the personal exemptions that are in this bill and the personal exemptions are there so that people can get up to a basic level and provide for their basics of assistance needs, \$11,000 protects their \$3,000 for dependent. We say that everybody is entitled to earn enough income to start to meet subsistent needs, then they start to pay the income tax. With those personal exemptions, the effective rate on wage earners on compensation is only about 2.3 percent of their income. So maybe we should have sold it early that way and this is a 2.3 percent income tax and not a 4 percent. But that is part of the confusion. I know that there is nowhere near public consensus in the opinion polls, or otherwise, or from constituents that we are hearing from, and I don't expect this to go forward today, but I think that we are going to have to keep looking at the fairness and equity of our tax system and to keep asking ourselves, what is the most equal and honest division of the common burden? The common burden of public education is a price that we pay for freedom. It is essential to the preservation of our free government. It is the cost of continued prosperity. It is an investment in the future of all of our children and the future citizens of this great state. Thank you.

SENATOR FERNALD: We are here today to talk about taxes, but I think that before we do, we need to talk about values, because if our politics do not follow our values, then we have truly lost our way. When I think of political values in New Hampshire, three immediately come to mind. The first is local control. Based on the idea that local government is better than distant government, because it is closer to the people and can be more responsive and govern more effectively. The second value that comes to mind is limited state government. Because we have good local control in New Hampshire, we do not need a big distant bureaucracy to govern us. The third value that comes to mind is fairness. In a democracy we are all created equal and so we are all entitled to equal justice and fair and equal treatment from our government. The New Hampshire Constitution is the highest law of this state. It was written in 1784 by people who had recently gained their independence from a tyrannical king. A king who had a habit of passing unfair taxes. Our forebear's believed in democracy, and because they believed in democracy, they also believed in education and equality; because they knew that democracy could not exist without equality and fairness and edu-

cation. All of these values are embodied in our constitution. In the Claremont decisions of the Supreme Court are simply another statement of our basic New Hampshire values. The Supreme Court's decision can be melted down into two essential points: We have an obligation to educate our children and we have an obligation to tax fairly. That is the Claremont Decision. The Supreme Court told us what we already knew, property taxes are unfair. They're unfair to property poor towns and they're unfair to moderate income homeowners. I think, as we go about the state, it is easy to overlook the unfairness. If you don't go to Greenville or Claremont or Pittsfield, if you don't stop to talk to an elderly person who is struggling to pay property taxes, then you might overlook the unfairness that is in our midst. To bring that point home, I have brought a special guest today, my guest is my grandmother. I would like you to welcome my grandmother to the New Hampshire Senate. My grandmother lives in Peterborough. She has been two-time widowed. She lives in a modest condominium, just four rooms in Peterborough. She is very happy to live near her family. She is very proud to support the public schools where her children, grandchildren were educated, and where my children, her great grandchildren, are going to school. But it is not easy for her to maintain a home in Peterborough. It is considered a rich town. The property taxes are high. Her income is far less than \$20,000. She lives on Social Security and a little bit of interest on her savings and a small pension from my grandpa Frank. Her property tax bill is over \$2,600 a year, which is over 15 percent of her income. This is the reality of New Hampshire today and our property tax system. That we put the highest burdens on the people least able to pay. The worst part about my grandmother's story is that it is far too common. We have thousands of people in the state who are paying over 10 percent of their income in property tax and almost all of them make less than \$50,000, and most of them are elderly. I have brought with me, one of my charts. I know that you are all pleased to see. I only brought two this time, not three. This is a distribution analysis of the tax burden in New Hampshire, state and local taxes. It shows average percentage of income paid in state and local tax for different income levels. What you can see is the people at the lowest level, like my grandmother, are paying on average, about 10 percent of their income in tax. Yet, when you go to the other end, maybe I will be a little cynical if I say, the Fisher Scientific End, the people at the top, the top 1 percent who make over \$269,000 a year, paying less than 4 percent. This is the New Hampshire advantage. Tax the devil out of people at the bottom and the middle so that the folks at the top can get off easy. We should be ashamed of this tax system. We have a moral imperative to change it. Now is the time. The Hagar, Below, Fernald is the way. It is based on a simple idea. New Hampshire is a community, and as members of that community we all have an obligation to support the public schools, so we should all support them in the same way, through 4 percent of our income after exemptions. Everyone pays their fair share. No exceptions, everybody contributes. Our plan has two taxes for education, but it is important to note that you only pay one. If you are an individual, you are subject to the income tax, but your home is exempt from the statewide property tax. If you are a business or a vacation home, you pay the statewide property tax, but you are not subject to the income tax. Everyone contributes. It raises about \$900,000,000 as new money for the schools to replace \$900,000,000 of property tax, which means on average, homeowner's property taxes will go down by about 50 percent and the property taxes

paid by business and industry will go down by about 25 percent. Our plan offers property tax relief to homeowners in every town in the state. No other plan can say that because all of the other plans want to substitute one homeowner property tax for another. Let us look at what this plan will do for my grandmother, since I brought her here for an example. Her property tax bill will go down nearly half, from nearly \$2,600 to about \$1,400. Her Social Security income will not be taxable because it is not taxable at the federal level at her income level. Her remaining income will be less than the \$11,000 exemption, so she will pay no income tax. We probably should have called our plan the Elderly Tax Relief Plan for New Hampshire because the greatest beneficiaries, maybe not in dollar terms, but in percentage terms, will be the elderly, who are struggling to maintain their homes. In fact, under our plan, the majority of homeowners will pay less in tax overall than they do now, and that is because a 50 or 40 or 60 percent drop in their property tax bill, on their own, will be greater than what they will pay in education income tax. Now at this point, you might say "how is this possible, everybody can't pay less?" and of course that is true. Where does the money come from to allow a tax cut to those who deserve it? Two places. The first one we should all love. We get it from somebody else. We get it from Massachusetts and Maine and Vermont because they all have income taxes now, but the residents who live there and work here, pay their income tax to their home state because we don't have one. If we implement an income tax here, Massachusetts has told us that it is somewhere in the neighborhood of \$60 million that we will gain in taxes from the treasury of Massachusetts because Massachusetts's people who work here will start paying us. Vermont last week said that they calculated it between \$7 to \$8.5 million for their state that they will lose if we put in this income tax. I suspect that we would see a similar number on the Maine border, so \$75 million of free money from out-of-state if we put in an income tax. The second place that the money comes from is from the people who are most well off in this state. Under our system that we have now, they simply do not pay in proportion to their income. We have a lot of elderly people with incomes of say \$20,000 who live in \$100,000 average homes. We also have a fair number of people in this state who make \$200,000 - ten times as much, but they don't live in ten times the house, they don't have million dollar homes by and large, so they don't pay ten times the tax. If we put in place our system, I showed you the burden, this is what happens to the tax burden in New Hampshire. It is almost even across all income levels. Everybody pays about the same share, and we can be true to our values of fairness in New Hampshire. I think that it is important to note that I have calculated what this plan does for me. My wife and I are both lawyers, we have above average income, we both live in a below average tax town, this plan will cost us money, but I would much rather support a fair system than to continue with a system that gives me some advantage and disadvantage to people who are least able to pay. Now there are people that are saying that the people in New Hampshire do not support this plan. I believe they are mistaken, because the people of New Hampshire believe in fairness. I have discussed this plan dozens of times and the reaction is always the same, particularly when I put the question this way: Would you support a 4 percent income tax, flat rate, that everybody pays, if it lowers the property tax on your home by half? The answer is always overwhelmingly, yes. This makes sense. We all pay our fair share and we even out the burdens that we see in our society today. Some say that the income tax is bad for our economy.



Well, please bring to this body, one economist who will testify that unfair taxes are good for the economy and that fair taxes are bad. You will not find such an economist, because it simply is not so. There are some that say this plan is flawed because it has not guaranteed that property taxes will go down. Well, if you look at the Sytek Plan, there is no guarantee there. There is no guarantee in the Shaheen Plan. There is no guarantee in the Peterson Plan. There is no guarantee in any plan that has been proposed. And there is a reason why. Because we value local control. The idea here is to raise money, state-wide, for the schools. But it is the people's money and we are going to give it back to them to fund adequate education; and we will let them decide what to do with it just as they do now. We trust the people with their own money and they are not going to go crazy with spending. They are going to vote themselves a property tax cut, they are not going to go wild with their budgets because they know that they have just paid their income tax and they want to see their property tax relief that they have been asking us for decades. Finally, there are people who say that income tax is against our New Hampshire traditions. People need to read their history. We have painted on the wall in the corner, Governor John Wentworth, who was the last colonial governor of New Hampshire. During his time in office, the colonial assembly adopted a tax law. It read in part like this "It is necessary there should be an equitable rule so that every person may be compelled to pay in proportion to his income." In this tax bill, all property, including farmland, mill equipment, farm animals, savings, were all taxed based on their ability to generate income. Homes, which generated no income, were not taxed. The founders of this state understood fair taxation and they taxed themselves based on income. We have strayed very far from our roots. We now have a system that forces people to choose between their homes and their communities. If you believe in property tax relief, if you believe in local control, if you believe in fairness, then this is your bill. When I campaigned for this office, people asked me how do we change this horrible system in New Hampshire and I said that we do it the same way that we do everything in a democracy, one vote at a time. Today is our day to vote. I ask you to use your vote wisely and vote for this amendment.

SENATOR PIGNATELLI: Like all of you and our colleagues in the House and the governor, I have searched my soul about the important vote that we make today. New Hampshire is a wonderful state. One that was home to my immigrant grandparents at the beginning of this century. Home to my mother who grew up on Canton Street in Manchester and graduated from Central High School and ran a successful business in Manchester, and who still lives in our state. Although I was born out of state, I always came to New Hampshire during summer vacations and school vacations ever since I was five years old. I feel like I grew up here in New Hampshire. Many warm feelings and great memories. Since 1973, New Hampshire has been my full time home and the place where Mike and I chose to raise our two children, Adam and Ben. So with this long connection to New Hampshire, of course I feel a very close bond to our state. Yet, through all of these years, it has been the livability, the beauty, the mountains, the lakes and the streams and the people who have meant so much and not our tax policy. While I acknowledge that the absence of an income tax is nice, I don't equate it to those beautiful mountains, lakes and streams; and I don't equate it to our common values and sense of community. Those are the things that make

New Hampshire home. The time has come, the need has come, to pass this legislation for two important reasons. We have no greater civic obligation than to educate New Hampshire's children and we need to tax more fairly. This amendment before us today, goes a long way in trying to accomplish both and it does not raise taxes. We are not increasing New Hampshire's total tax burden. Adam Smith, the father of modern capitalism back in 1776 remarked, "The subjects of every state ought to contribute toward the support of the government as nearly as possible in proportion to their respective abilities." I believe in that principle and I believe that this amendment comes the closest to achieving it. The property tax has its place, but our present reliance on it is clearly unfair and confiscatory to many as our court concluded. If we were to continue to rely exclusively on real estate taxes, their unfairness would only become worse. Our House colleagues surely reflected on this in their vote. This bill recognizes economic reality. Our state needs a stable and fair source of revenue to educate our children. I will work for a constitutional amendment to assure that all money collected be returned to cities and towns and that it be used for education improvement and property tax relief. It appears that this bill will not become the law of our state. Although I understand the arguments for that position, I believe it to be a serious mistake. Governing is largely about choices, and so today, I choose to cast my vote for my 50,000 constituents in favor of this bill, in favor of educating our young people and taxing people in proportion to their abilities to pay. In 1880 our Supreme Court reminded our predecessors, equality is the cornerstone of every just and wholesome system of taxation. Every departure from this principle, no matter what the pretext may be, shifts upon one class, a share of the burden of taxation that belongs to another. Ninety-seven years early in 1783 some good people who came before us wrote that age old idea into our constitution. Today's Supreme Court justices to their credit, simply reminded us of it. Thank you.

SENATOR HOLLINGWORTH: First I would like to say that I am very proud of the Senate. The work that has gone into this body over the last weeks, I am very proud to be related or associated with you. A few weeks ago, I stood on this floor and chastised some for not being involved. I was wrong. I apologize for that. The majority of you, all of you in fact, have considered this issue and have labored hard over what is the right thing to do and so I thank you for your involvement. Today what has been said here on the floor is not because most of us think in any way that we can change votes. I think that the votes are pretty much in everybody's mind. They decided before they came here. But it is to set forth for the future record, and for our constituencies where we stand, and why we stand where we do. When I ran for public office this year, I said that I wanted to come back because I felt that the most important issue ever before this state and before me as a Senator or a House member, would be to fund education and to provide for education, and I was pleased when I was elected. I have to tell you that when I was elected 17 years ago to the House of Representatives and I walked up that walkway the very first day I came here as a House member and I realized that I was representing people and that my decisions were going to be for the people that I was representing, I was chilled. I had goose bumps. I was thrilled. I looked at the flag flying and the beautiful blue sky and I was so proud of the honor that I had and I am no less proud today. I am no less thrilled today to be representing the people. My roots are deep in New Hampshire as Senator Pignatelli spoke

about. I grew up here and went to Hampton School. Hampton was the very first school in New Hampshire. The very first school. My children all attended school here and they all live here. My granddaughter, in fact I brought some pictures because my husband said "remember what it is about—keep your eye on the prize." That is me in that picture on my very first day of school and that is my youngest daughter on her very first day of school. These are the pictures of my children. This is a picture of my grand-daughter, the very first time that I was sworn in as a Senator, sitting in this very seat. These are my children and they all live in New Hampshire and they all love this state and they all went to school here. This is my new grand-daughter, she is six months old and my other grand-daughter who will start kindergarten in two years. These are the children that I represent in the different towns like Exeter and Kensington and East Kingston that are here today. This is what this is about. That is what the prize is about. It is our future. The future of this state and where we are going to be and the pride that we should have in it. For years and years, people in this state, for 16 years, have been saying that taxation is unfair. It has been unfair and that is what this is about. One of the Senators just said to me recently, "well life is unfair." Well, that is true, and he is right. But the court said that "you cannot go on being unfair" and that is why we are here today. Those people who took pride and suffered for 16 years to fund education, and they did so. We have one of the best school systems where our children are educated in this state. They did make tremendous sacrifices to themselves. They did so because they valued education and now it is our turn as a state to value that education and to determine how we are going to fund it and to do so with pride. People will say, "well people reject paying taxes and so you will have to hide the taxes, a sales tax on alcohol or on business or something so that people don't know that they are paying." I don't believe that. I think that there should be such pride and value that we place on education that we should be proud to stand up and say, "I will pay my fair share." There are going to be some that say "no, I don't want to" and that they are going to leave the state. But you have all been in a place where you have been out to dinner, or had a party, when the common good was for everybody, and the eldest there, who maybe didn't have much in her pocketbook, paid her fair share, and someone who might have illness in their family, may have given their fair share. There may have been somebody at the table who had everything, played the golf course, got a new car every year, had everything, but he refused to pay his fair share. In fact, he wanted to pay one-third of what the poorest one paid. You wouldn't like him very much and you wouldn't want him back again. You would be saying that if he doesn't want to pay his fair share, then he should be there with us. I guess that is what it comes down to. This process and this body has an opportunity, now, to do what this body needs to do and what it believes in. There are some threats that if we can't pass this or if we did pass it, that it would be vetoed. But process is what this is all about. If this bill moves forward, it goes to the House and the House has to concur. If they don't concur, then it doesn't go any further. But that is what this body...and that is why I had so much pride the day that I walked up that walkway, I recognized that I had a place in representing my constituency. I just hope that what we replace this with, if we don't pass this, will not be so unfair and so unjust that two years from now we will be back here doing the same thing again. Thank you very much.



SENATOR WHEELER: I should introduce this as "now for something completely different" but as the more or less silent co-sponsor of HB 109 I have watched in awe and admiration as the lead sponsors have articulated all of the values expressed in the bill. I find them extraordinarily persuasive and I am astonished at the amount of work and time that they have put in to bring this excellent package before us today. I didn't want to keep on being silent. I didn't want to be like the little red hen that only wanted to eat the bread and didn't want to do anything that had to do with the baking of it, so I have a few little grains of flour that I am bringing to you today in the form of the parable of the market basket. Say you have gone to a grocery store, one like Pic-N-Pay. You are going to do what it tells you to do, you are going to pick something and you are going to pay for it and you've got your basket and you know what you want. You enter that store and you say, "there is this one item and this is what I want. It is wholesome and it will nourish my entire family, some like it better than others, but I know that it is the right thing to buy and I can afford it." So you have your market basket and you are headed for that item. Suddenly out of the blue, this disembodied voice comes over the intercom and says, "that item is not available to you today." You think, "oh my gosh, I thought that I could get that item, what do you mean it is not available to me?" And then you start seeing little signs around saying that this is available today and this is available today, so you say, okay. I will see what I can fill my market basket with. So you go around and you look at the first item that is available, it is gone by its sell by date. You say, oh well, it is a little stale, but maybe I can buy it. But then you go and look at the next item and it is soft, mushy and basically rotten and you decide that you are not going to put that in your market basket. You go to the next item and it has a skull and crossbones on it, it is toxic to your family. I do not want to buy that for my family, but you say, well I guess that I better do it and you start to fill your basket and you think, I can't put those things in my basket for my family. So you stiffen your spine and you walk to the check out counter and you say, "I am going to take this one item and I don't care what I heard over the intercom, this is what I want. Then you say, just as a little extra stiffener, you say "and I will take that bumper sticker over there and I will put that in my basket, you know the one that says question authority." So you put that in your basket and you feel good about yourself. And that is what we are about today. This is truly a watershed moment when compromise isn't good enough. I implore you all to seize this tremendous historic opportunity and vote for the one solution that possesses all of the right stuff. It possesses fairness, it is based on your ability to pay and it possesses predictability. It possesses sustainability. This is what we know that our revenue source needs to have for the future in New Hampshire. Ladies and gentlemen, the time has come to vote for an income tax. Thank you.

SENATOR SQUIRES: I rise in support of this amendment. For 15 months I have been submerged by an ocean of information and opinions regarding what has become known as Claremont II. Such has been the magnitude of this onslaught that it wasn't long before I became aware of the fact that I was lost. That I was unable to locate any fixed points from which I might proceed to a solution. If I didn't know where I was, then how could I possibly know where I wanted to go. Thus was about 3 months ago, I began to locate my bearings in order to clarify an understanding of today's issue before I proceeded to a solution. Today's issue is at a fundamental level, a matter of taxation, education, adequacy,

accountability and similar questions are all comprised essential components. But I believe that these are subsidiary to the larger question of how we will replace the current funding of public education. Accordingly, I have arrived at five conclusions that lie at the heart of today's vote. 1) For virtually all citizens, taxes are paid out of income. 2) There should be some relationship between how much someone pays in tax and their ability to do so. 3) In this entire debate, no one has explained to me in a logical way, the relationship about how one pays in taxes and the assessed value of your property and the locally established tax rate. As a result, I conclude that for many people there isn't a relationship. 4) The issue of a property tax is uppermost in the minds of virtually every citizen in New Hampshire. 5) In nearly every city and town in New Hampshire, the property tax plays a central role in local government. Beyond what we know to be true of the Claremont five. There are countless towns, which find themselves trapped in a system in which there is no economic escape. I have a town like that. Greenville. It has been trying for 50 years to encourage economic development and it can't. It falls farther and farther behind. But these issues are not just confined to property poor towns. Mason, another town in my community, it is lucky at the moment because it doesn't have many children. It has an average daily membership burden in the cooperative school, but when that changes, and it will, then Mason will see the reality of the present system in greater clarity than they do today. Brookline is growing at 10 percent a year in its elementary population and the property taxpayer is asked to fund that entire growth. My own town, Hollis, if you are young, if you have a low income, if you are older on a fixed income, you can't move there because of the property tax. Nor are these problems confined to small communities. Nashua confronts an increasingly urban evolution with all of its problems and a growth in the school population, all of which is paid for by the property tax. Manchester, the states biggest system, has a failing group of physical facilities and the same urban issues. The list is almost as long as there are school districts in New Hampshire. This bill, unambiguously, confronts these issues and moves us to where, I believe, we should go. While removing New Hampshire's singular dependence on the property tax, it offers a singular benefit to those on fixed incomes, those with reduced incomes, and those who may suffer the economic consequences of unemployment. Of all of the bills before the Senate, this is the only one that offers immediate and sustained property tax relief by virtue of the Homestead Exemption. There will almost certainly be some adverse consequences, but in my opinion, these pale in significance when compared to the impact of increased business taxes, the introduction of casino gambling, the sales tax, capital gains tax or, worst of all, the commitment of future increases in state revenue to education. There is a soul among us that knows what that is going to do to the operation of state government. As for education, and as a result of the Senate Education Committee, I can go as a result of this bill, and make the case to any school board in New Hampshire that adequacy has been addressed in terms of cost and relationship to what other states are doing. Here is the view of the United States, here we are over here, as a public support of public education, and this bill moves us over here. Not to the end of the chart and not some cheap way down here, but right there. I can go and defend that. I look forward to the day where we can support a constitutional amendment to confine this tax to education. I think that would be a fantastic advantage. Now I want to speak to my constituents, many of who do not agree with me. In fact, they point-blank, disagree. In many

of my conversations and letters, I have to address fear. My constituents tell me that an affirmative vote on this bill guarantees that they will never vote for me again. Furthermore, I am being watched, as I am some sort of miscreant. Republicans who voted for this bill in the House of Representatives are branded by an editorialist in the same category as sympathizers of the nazis. Such a comparison, however vile and contemptible that it may be, is not something anyone would willingly seek. After a while, my convictions erode as these whispers of fear increase in volume and intensity and they say to me, avoid all of that. Just vote no and retreat to the comfort of doing so. Intimidation has played a big role in this debate. The chief executive of this state says that she is going to veto it. Well, I stand here and remind you all that we are an independent branch of government and we should not make our judgements based on some threat of a future event, because if we do that, we forgo our independence and retreat into subservience. I have been moved and saddened by the belief of some of my constituents, one of who said to me, "I don't care about those people in Claremont." Now you think about that, "those people in Claremont." And he went on to say, "They shouldn't have moved there and now that they are there, they ought to move out." This is your district we are talking about Senator Disnard. Well, I care and so should you. I care because New Hampshire is my home. I have lived here all of my life. I care about Claremont, Hollis, Berlin, Nashua, Manchester, Concord, Greenville, Sutton, I care about every town in New Hampshire and every person who lives here, regardless of whether they vote or what their political affiliations may be. So I say to my constituent, "you are wrong for that view." That is the disintegration of New Hampshire's society and a terrifying dissent into careless self-interest. The speaker of the House in her remarks during that debate, offered the view of Edmond Burke, an english statesman who said in discussing the relationship that he had with his supporter, Edmond Burke pointed out the fact that if he surrendered his judgement, he betrayed them. He clearly would betray a constituent with a different point of view. The only thing that I have to offer today is my judgement. I desire a long and productive life and as I reflect back on this day, I hope to be able to say that, at this hour, in this chamber, I did not surrender my judgement to fear or intimidation, or my own self interest, by voting for something that I thought was inferior or failed to vote for something that I knew to be superior; no office, no accolade, no privilege, no title, no election, could ever make up for that surrender, because if I did that, I would lose my integrity and once it is gone, you never get it back. I believe that this bill is the best solution for the majority of the citizens of New Hampshire and for every city and town, and thus I cannot do otherwise but support it. Thank you.

SENATOR LARSEN: Mr. President and fellow members of the Senate, I know that we are all feeling the importance of this historic session and the pressures which accompany it. It is appropriate that so many today have taken a moment to look at history and the thoughts of our founding fathers. As far back as the provincial days in 1642, the state played a role in defining education, beginning as early as 1789 New Hampshire's legislature set the amount to be raised for public schools. From local property taxes in each community effectively setting a statewide property tax at an equalized rate. That was 1789. For centuries, New Hampshire citizens have supported and their laws have reflected the calm and the good that comes from a society which supports the education of its children regardless of where they live. In fact, I believe a majority of



New Hampshire-ites agree with the Supreme Court decision that it is a fundamental right of our children to receive a constitutionally adequate education. That is why after a full year of legislative wrangling, attempts to overturn this fundamental right failed. So now with just ten days to go, we are faced with four realities, which were summarized, to us by our attorney general. First, the present system of funding education is unconstitutional and must be discontinued. Second, a new system of funding education must be adopted and the legislature has wide latitude in choosing the means. Third, the new system of funding must provide for constitutionally adequate public education and must assure that comparable funding for every district at a level which is providing for such education. Fourth, these changes must replace the present funding system by the end of the 1998 tax year beginning April 1, 1999.

**TAPE CHANGE** The House of Representatives took over two months to review the funding options available to them and with a historic vote, passed the income tax as proposed in HB 109. Now the Senate with little more than three weeks has reviewed HB 109 and other options available for public funding of education. First and foremost, I believe that it is our duty, as sworn by all of us, to uphold the constitution and meet the deadlines passed to us by the court. Second, I believe that we must act in a timely and responsible way to define the cost of a constitutionally adequate education and select a funding plan which we believe will provide reliable sources of revenue to fund our schools statewide. As I stated in the Senate Finance Committee, I believe that an income tax is the fairest way to pay for education because the tax is based on the ability to pay. Years ago, as you know, in an agricultural based economy, the property tax was the best measure and most appropriate way to pay for education. But it is time that we move on to a more appropriate way to pay for education, to spread the costs more evenly and reduce the burden of property taxes to pay for education. The bill sponsors can speak to all of the benefits of the bill in far greater detail than I can, yet I speak in support of the Below, Fernald amendment today because it meets five standards. It is fair because it is based on the ability to pay. Second, it provides a defensible definition of an adequate education and the funding to go with it. Third, it has the greatest likelihood of providing reliable revenue into the future. Fourth, it will provide significant property tax relief to the majority of New Hampshire-ites. Fifth, it is the plan, which I believe the majority of my district supports. I brought, just to demonstrate, what some of us have been receiving in terms of mail and phone messages in a single day. What I believe is a visual statement of how much my district believes in the fairness of this tax. While the court might have granted us wide latitude in choosing the means by which public education is to be supported, at the end of this debate, we must recognize that it is our sworn duty to support a proportionate and reasonable method of funding education of our children of this state in a constitutionally adequate public education by April 1. Like the patriots of our past, I urge all of us to live up to our share of responsibilities and move to a final decision so that we can send our plan to the House and meet our deadline. Thank you.

SENATOR COHEN: I must say, like Senator Hollingworth, I am really proud to be here today in this exceptional moment in history this 1999-2000 Senate. I want us to ask ourselves why are we here in the state Senate? Is it to advance ourselves? Is it to simply keep getting reelected to this? Of course not. We are here to serve the people and to do what is best for New Hampshire's taxpayers, for our children, our resources

and our future. If we are here, each of us individually for another 20 years, I don't think that we will see anything as important as this vote that we are undertaking today. It is not self-serving considerations therefore, which must guide our decisions today. The final analysis, I believe, our conscience must be our guide. Our responsibility is to vote for and institute a policy that will best change what needs to be changed with the result to benefit most people. All of us, all 24 of us, I believe, agree that the system of consistently higher and higher taxes without regard to ability to pay is broken and must be fixed. The court has said that as well and has made it illegal. Politically, each of us is in a very tough position. For all of us, no matter what we do, no matter what, many of our constituents are going to be angry, but solutions driven strictly by polling data are unconscionable. We are elected to lead. More than ever before the people look to us in this historic moment to take personal risks and to act on courage like we have never had to muster before. I am pleased that so many of us are doing that. The right thing and what is popular in the moment may or may not be one and the same. Public opinion changes with new information. To resolve this issue the people of New Hampshire expect us to demonstrate leadership, wisdom and courage. We owe the people of New Hampshire nothing less. Our responsibilities to face the challenge head on, to limit the pain, and to create the highest level of fairness. Under Hager, Below, Fernald, more people pay less taxes, that is a fact. Education is funded more fairly with greater stability and it meets all of the tests. Why don't we pass it? I think one reason that we all know is the threat of a veto by the governor and I regret that the derailing defeat of legislative intention weighs heavily in this process. This is a good process. It is a system of checks and balances and sometimes there is confrontation. The Senate should not abandon the process simply because the governor threatens a veto. I would also like to remind us all, the Senate and the governor in any negotiation situation, it is wrong, it is counterproductive to be locked into positions. We should be open and weigh all the reasonable alternatives without the hindrance of prior restraint, keeping an eye on the best solution. We must do what we are here for, which is to serve the interest of the people of New Hampshire far above all other considerations. Now I have always respected the governor and I have worked with her for years and supported her. I believe that the state is now moving and in the right direction; however, I do disagree on this issue. So why should we vote for this with the threat of a gubernatorial veto? As has been said, we in the Senate are independent. We must not be afraid to do what we believe is right. To not stand up for what we believe in, to do any less is to not do our job. This amendment is the fairest. The governor and all of us know that is true. Campaign slogans inherited from Bill Loeb and Meldrim Thomson are not the same thing as good governing. It is always wrong to make policy based on saving face. Always. I have never supported a new broad-based tax before; although we do have broad base taxes already. I have always required exceptional guarantees of no easy ratcheting up and then all of the money would go to education. Those guarantees, those necessary protections are here in the Hager, Below, Fernald, and I will vote for it despite the threat of a veto. Are there other options, of course there will be. We will cobble together at the last minute, something which will, may eventually reach something distasteful enough for all of us to compromise on, but unlike other proposals put together at the last minute with the gun at our head, this amendment has the advantage of being deliberated, studied and worked on for a long, long time. This is not a

short-term band-aid. In the past 15 months the legislature has considered all other options and none has matched this particular bill. It is not only the most effective approach to the problem, but also the only plan to commence significant support among both legislators and voters. It is a far-reaching, long lasting solution with the least economic disruption of any proposal. The majority of us do agree it is the fairest. In the beginning I asked why are we here? It isn't just to get re-elected, it is what we do here that counts. In this most crucial, most historic of moments, my own political future is worth the risk of doing what I know is right. For me, the right thing is Hager, Below, Fernald. The Supreme Court gave us an unprecedented opportunity to create an equitable means of funding education. The House looked exhaustively at other options and passed this particular bill. Even if it doesn't win enough votes today for passage, we in the Senate also know that Hager, Below, Fernald meets the challenge. Let us meet and not duck the challenge of the constitution. Let's vote our conscience and not our fears and through our brave vote let's make life better for our constituents and for the children of New Hampshire's future. I strongly urge passage of this amendment. Thank you.

SENATOR D'ALLESANDRO: I rise in opposition to the amendment. I want to compliment each and every one of the previous speakers because I think that their articulation and their eloquence is really something that makes me awful proud to be a public official. The fact that one can articulate their feelings and bring those to the forefront, is a true example of democracy. But I might say one thing about the New Hampshire constitution. You know, in framing the New Hampshire constitution, there was an article in there that said that Roman Catholics couldn't hold public office. That wasn't very fair and certainly wasn't very equitable. Let's not forget that, and bias and prejudice has been pervasive in this nation throughout its growth. We used to burn people at the stake in Salem, who just didn't believe the way that others did. We strive for fairness, and in my opinion, there is another solution. I have articulated that other solution before the Finance Committee and will do that again. I don't think that we should condemn our governor for saying that she ran on a principle and she stands on that principle, and as a result of that, has an axe over our head. We all ran on principles. We know what we ran for. We know what we are doing and we all make decisions based on what we believe in. I ran opposed to an income tax. The people that I represent, and I might say, more women in my district work than any city of comparable size in the United States of America. There are more families with two or more people working in my district than any city of comparable size in the United States of America. Do they own homes? Yes they do. Is the property tax high? Absolutely, it is. How do they get their homes? In many instances the grandfather passed the home down to the son, the son passed it down to his son. Do we pledge to reduce property taxes? Yes. We have got to reduce property taxes. Is there another way to do it? Yes, there is another way to do it. How fundamental is education? I am a product of education. I am the first one in my family to have graduated from college. Life isn't fair. My mother died when she was 32 years of age. She never got a chance to see her son get elected to the House of Representatives, to the Executive Council, to the Senate, to run for governor. There is unfairness there. One day as I was walking up to the State House I said to myself, "Oh, if my mother could have only seen this. She would have been so proud of her son." My mother who had to leave school to work in a candy factory to support her family.



So it isn't fair, and I understand that and we move forward based on how we think that we can make things better. That is what politics is all about, and I hope that is what this debate is all about. This debate will go forward. It is not going to end this year and it isn't going to end next year. It will go on and on and on. That is the way life is. We have pledged to develop a solution to a problem. We have pledged to have better schools. We have pledged to fund them properly. I sit on the local school board in Manchester and I have been there for the last eight years. I know the problem. I deal with it on a daily basis. Do I think that this is the best way to solve the problem? No. Do I respect other opinions? Absolutely. Absolutely. Do I know that these are tough times and tough decisions? Absolutely, but I believe that there is another way. There is another way and therefore, I will vote against this amendment. Thank you very much, Mr. President.

SENATOR JOHNSON: I think that it is appropriate that I follow on Senator D'Allesandro's comments. I have a couple of comments about the ongoing dialogue, which I have observed. I really don't believe that it is appropriate that we single out one New Hampshire company and bring them into this debate. I think that company has been a wonderful company as well as an asset to the state of New Hampshire, not only in economic development but also in the number of jobs that they produce. Secondly, I think that an article that was in one of the local papers, which stated the governor as saying "quit spending time on the income tax and start looking at other options. But as we look at other options, what we see is that they all stink. When you show us something better, something more palatable, maybe we can do that." I would hope that in our ongoing dialogue that we have to solve this problem that we can show a little more civility in the Senate body. Thank you.

SENATOR GORDON: I really appreciate the debate here today. I think that in all of the time that I have been in the Senate, I think that the speeches that have been given here today probably are the most superior in quality that I have ever heard in this chamber. I certainly stand and commend Senator Below and Senator Fernald in particular for the work that they have done on this particular bill as it has been amended. I ran for re-election and I ran without taking what is known as the "pledge." I did that at some risk. I had a conservative opponent and I took some type of beating in the primary over that, but I decided that I had to be free to vote my conscience when we came back down here in Concord. That meant that if I believed that an income tax was in the best interest of my constituents, that I, in fact, would vote for that. In fact, I have been quite outspoken about the fact that I think that perhaps, ultimately in terms of ability to pay, an income tax probably is the fairest form of taxation that we can have. But on the other hand, I haven't given up my conservative principles. I am in fact, a fiscal conservative. I have taken a pledge and that pledge is to do what I think is financially, fiscally, most responsible for my constituents and for the people of the state. I could support an income tax, I could vote for an income tax. I do have a problem with the amendment as it appears before us today. I have expressed that, I think, consistently in the meetings of the Finance Committee and prior to that in the Education Committee. That is, that I think that in this amendment, raising \$980,000,000, I believe that is too large a step in the first year of our response to the Claremont decision. I believe, and I solemnly and firmly believe that we should proceed with greater moderation in the first year for a variety of reasons. One of which is we know that we are not simply going

to be substituting income tax dollars for property tax dollars. We know that there is going to be a substantial increase in educational spending as the results of our efforts here today. There has to be, that is what the lawsuit was all about. The fact that some towns can't afford to provide their children with the quality education that they would like to have because they are so stretched in order to provide that through property taxation. So we know that there will be a substantial increase in spending. We don't know whether that will be a \$100 million or \$200 million, but it is enough that it causes me concern, and that concern is that I believe that in the first year that we should proceed with some moderation and that we should not take a step where we go from being last in the nation as far as educational contribution to a point where we are providing nearly \$1 billion, or placing ourselves on the chart where Senator Squires said we would be. I think that if we at least covered half the cost of education that would be an appropriate marker. That would be an appropriate place to go in the first year with the understanding that we all have that this is not a final step. I think that we have all agreed that this is an interim plan and that we need a committee to further study where we go from here. So I am going to vote against the plan today first for that reason. There is a second reason, and that is the state-wide property tax portion of this causes me a great deal of concern. It causes me concern because if the property tax portion of our taxation today is unfair for people who own personal residences, and I haven't been convinced yet that it isn't unfair for businesses or people who own second homes. So I need to deal with that. I don't want to see us put a knife at the neck of the golden goose, particularly the lakes region which I represent where our economy has a large part fueled by people who do own second homes and make our economy work. So I have concerns about that bill. When Senator Below in what I thought was a superb speech today, talked about it, he said "we are not here to talk about the details here today." I think his exact words were "we are here to debate about the principles or the conduct of the bill." I guess what I am saying is that we have to talk about the details. This is a 41 page amendment. I think that we need to talk about the details and get comfortable. I am a little disappointed that some people are so resolute that this bill is going nowhere because I don't think that that necessarily has to be the case, because what you need is 13 votes. What that takes is frankly, I think it takes going beyond calling this the Hager, Below, Fernald bill. I think that what that is going to take is calling this the Senate Finance property relief bill. I read the Monitor today and my name was mentioned in the editorial as somebody who probably would vote against this today because they didn't want to send the bill to the governor. Well, I can tell you that is the furthest thing from the truth. I am a Republican. Nothing would give me greater pleasure than to have the governor feel the same type of discomfort that I have been feeling. So that is not the reason that I am voting against the bill. I am voting against the amendment today because I don't think that the amendment is where it needs to be. Okay? I would hope that you would all vote against it; because I think that instead of making this the Hager, Below, Fernald bill, we ought to work on it and make it a Senate bill. I also think that if we can't do that, and if the governor says there is no way that she is going to have an income tax, I think that there are other solutions. I think that Senator Squires...you know we are the PX for the rest of New England. Well there is no reason why we can't change that and make it work in different ways for us. So I am going to vote against this today, but I am

going to vote that way for good reasons. I hope that everybody respects that and that this isn't a personal issue about whether you agree or you disagree. What I found since I have been in the Senate, more than anything else, is that I am not always right, and that when more people feel the other way than I do, usually I am wrong. I hope that this won't be personal at all today and that maybe we can set to work and still resolve the problem. I am confident that we can. I would hope that you vote against the amendment today and then work on it and make this a Senate bill and not the Hager, Below, Fernald bill.

SENATOR F. KING: I appreciate the opportunity to speak. I am not going to give you my personal biography, I just turned 70 and it would take much too long. I wasn't going to speak so I do not have a prepared speech. I am a little bit bothered by some of those innuendoes that if by voting against this bill somehow is because there are threats of a veto and that I am being influenced by polling data; and some others are fear and self interest or maybe a lack of integrity or political motives, because that is not the case with me. I have said before that I think that this is too much money for a plan in progress. I, too, did not take the pledge and I didn't take it the time before when I ran because I wanted to keep my options open. I don't have a problem voting for an income tax. I think that the arguments that have been made for an income tax are very good. I think that my constituents probably would agree with that. But the fact is, we are about to spend \$1 billion of money that has to be raised somehow in this state. What troubles me and continues to trouble me is the fact that a very significant, important part of this amendment has to do with the duties of the commission that is going to be established and this is what the commission is going to do: It is going to determine and recommend the costs of an adequate education for all students in New Hampshire by determining and calculating the adjustments for individual school districts based on yearly inflation costs, cost of living variances, transportation variability, demographics" and on and on. It recognizes that we have not found the answer yet. We are still looking for the answer. I have said before and I will say it again, the work done on this bill is amazing. It is a terrifically complicated issue and it is a lot harder to change laws once they have been made. At least that is my observation from my short time in the Senate, than it is to take the time to do it right. This is not the end of the process today. The world will not come to an end tomorrow if this amendment doesn't pass. I think that we need to find a way to continue the work of this commission and the second commission that is in this legislation. We need to recognize that this state has got to fund with state dollars, local education. We have to find a way to do that. But we have to do it the right way. We have to take the time to do it. I don't think that spending a billion dollars on a work-in-progress I can vote for and that is what I have said before. I said that a few weeks ago on the floor of the Senate. I am not influenced by all of these terrible things that have been mentioned. I am here, just one vote. I vote my own conscience and I vote the way that I think that I should vote and that is the way that I am going to vote today. I hope that tomorrow and the day after that and until we can accomplish this, that we can work together. I have been telling my fellow Senators and we have talked about this issue and we have all talked one-on-one and in small groups, we should keep our sense of humor and we should recognize that we have to keep working on this. Today is not the end of it. A vote



against this today doesn't mean that I can't eventually support something, but I am not ready to commit \$1 billion today on this particular issue, and I am not going to vote for it.

SENATOR COHEN: This is for either Senator King or Senator Gordon. Both of you, I appreciate that you spoke to how an income tax may be the fairest way to go and that you both have some reservations with the specific language in this bill. I will ask either or both of you if this amendment does not pass today, can I get a commitment that you would be interested in tabling that and sitting down together to work in a bipartisan manner to work on this and perhaps work on the adequacy figures and see what we can come up with based on the principles of this bill?

SENATOR F. KING: I think that my answer today will be the same as the one that I gave you yesterday when we talked about the issue. I would be tickled to death to do that.

SENATOR MCCARLEY: In the interest of keeping our sense of humor, I had no idea that I would be the last speaker when I raised my hand, so I may not be very funny, but I do have a sense of humor, Senator King. I guess that I will say right up front in case there is any suspense associated here with this that I am going to be voting in opposition to this amendment today, but as others have said, I feel a need to address that because I can sit here and listen to my reasoning that I have heard from other Senators and I do not believe that it is my reason for voting no. I think that we all come to this from very different places. I have heard a lot of talk today about perhaps we haven't addressed people in our community who have been strangled by the current property tax system. I would say unequivocally, spending ten years chairing a school board, every year when I have fought for a budget that talks about quality education, I have had to confront that. Every single year. I finally came over here, committed to confronting that and I have worked very hard to do something for my community two years ago, to start to provide some relief. When I ran this time, like many others, I made only three basic promises. That we, all 425 of us would solve this problem and I fully believed that. I also made a promise that we would be talking about an adequate education that has funding associated with it that speaks to that and starts to help communities get to that adequate education, and I finally promised that property taxes would go down. I do not believe at this point in time and I am not going to disagree with any argument relative to the merits of this bill and what it would or would not do in my district. I do want to say having taken the vote last week and opened the door widely, I want to thank the newspapers for guaranteeing that my phone calls increased dramatically as a result of my quotes to the newspaper and I want to say that is good. I am delighted. I am delighted that all of my friends who thought they didn't have to call did call, it has been great to hear from people. The bottom line is that this is a conscience vote for me. I have been asked to vote my conscience. My conscience tells me that a yes vote on this bill will not move me one hour closer to a solution. What I promise, bottom line is a solution. While I always encourage further talk, when I listened to Senator Cohen's question to Senator King, I get concerned that we will spend more time making this better. Better is always better, but the bottom line, the longer we take, the further we risk where this state is and therefore, in all deference to the sponsors and to my colleagues who have challenged me fairly as to exactly where my loyalties were and where to whom, my loyalties are to my conscience that tells me that it is time to move on. I don't talk about

threats and I am really tired of talking about who is going to look the worst. I believe that we have to move on. I believe that people here want to move on and I think a yes vote on this bill will actually impede that. I cannot in conscience do that. Thank you.

**SENATOR FRANCOEUR: TAPE CHANGE - TAPE INAUDIBLE**

**SENATOR FERNALD: TAPE INAUDIBLE**

**SENATOR GORDON: TAPE INAUDIBLE** tax on principles, you have to deal with the details because we are raising the largest, single, appropriation in the history of the state and I don't think that I would be doing my constituents a very good service if I didn't come down here and look at the details.

**SENATOR FERNALD:** I think that in the past, you have expressed a belief that we can fund adequacy somewhere in the \$700 million range. I guess my question to you is if we are currently spending about \$1.4 billion, do you think that we can cut school spending in this state in half and still adequately educate everybody?

**SENATOR GORDON:** I think therein lies a difference of approach between yourself and myself in regard to our response to the Claremont lawsuit. That is a fundamental disagreement and I am not sure that we are going to resolve that, but there are those people who feel that in the very first year of our response, that we necessarily have to fully fund whatever is the adequate number. I guess that I have a different feeling about that. My feeling about that is that in the very first year, we should ensure that every child receive an adequate education. At \$700 million we would be sending out \$3,500 per child. I have no doubt in my mind that we would be ensuring that every child in the state received an adequate education in the first year. Then, since we have recognized that this is a work-in-progress as Senator King has said, we will have a biennium in which to view the circumstances and come up and decide what is fully the cost of an adequate education? Something which has plagued us in the Senate, or in the legislature as a whole, because I am not sure that there is general agreement as to what is, we will have time over the next biennium to work on that. To answer your question, yes. I think that we should appropriate a lower number, something lower perhaps than the total costs of providing education to a child in the first year and proceed with moderation.

**SENATOR FERNALD:** I agree that we have to ensure adequacy, but do you think that the \$3,500 per student would actually fund adequacy, which I think is our Supreme Court requirement?

**SENATOR GORDON:** Well, again, getting into detail, no. I don't think that if you view adequacy as the amount of money that is required to fully educate a child, that that in fact would satisfy the adequacy requirement. I do have some concerns as to what the court intended when it used the word "adequacy." As you may or may not know, I have testified in front of the Senate Finance Committee and said that I think that it would be appropriate to send a question to the court. I know that it is the legislature's responsibility to define adequacy and I accept that responsibility, but I think that there has been a great deal of confusion as to what the court intended when it used the word, "adequacy." What I am finding is that many of my colleagues interpret that to mean that any costs that would be required in order to provide a child with education should be included with an adequacy, which of course creates a very, very high number. There are other colleagues that feel that

it is an amount of money, which would be necessary in order to ensure that every child in the state receives an adequate education, which is a very different concept. So, I would be in favor of asking the court to clarify exactly what it intended. The fact is that \$5,000 a child, I don't think that satisfies the full obligation if, in fact, you view adequacy as the full amount of money that is required to educate a child in this state. So even at \$5,000 I don't think that that criteria is met. It seems to me that the court intended something less than that and I am not sure that I know exactly what that is and I would like to have a further understanding.

SENATOR BROWN: Senator Below, in the debate on this issue I have come to respect your position and real sincere dedication, I want you to know that. In your bill it talks about 4 percent and a 6 percent majority. I have heard that you support a constitutional amendment to put that in writing. Going back to earlier in the session, we heard about cynicism and I might call it skepticism. Would you be willing to bring that constitutional amendment forward before this comes back as SB 109 or would you be willing to tie in the implementation of this tax to the passage of that amendment?

SENATOR BELOW: That constitutional amendment is in the Education Committee and I would like to see it come out and put it in conjunction with this as amended, because the amendment as introduced simply dedicated the income tax and statewide property tax to education only; so I think that it should go further and put the idea of capping the rate and requiring a simple majority to raise that rate right in the constitution, cause we know that it is vulnerable just in legislation to a change by majority vote. So yes, I would support that kind of change.

SENATOR F. KING: Senator Fernald, I heard your discussion with Senator Gordon relative to the issue of adequacy and you seem to believe that the magic number is \$5,000?

SENATOR FERNALD: That is possibly the number in the bill.

SENATOR F. KING: Yes.

SENATOR FERNALD: I don't believe that it is a magic number.

SENATOR F. KING: Well you said that it meets the test of the court; therefore, it must be a magic number, it must be "the" number. Is it "the" number?

SENATOR FERNALD: I think that there is more than one way to define adequacy that would withstand scrutiny if it were challenged and taken back to the Supreme Court.

SENATOR F. KING: Let me ask you this question. This is the problem that I am having: I have a town in my district, arguably the poorest town in the state, with \$104,000 of property value per student and a sum less than \$11,000 per capita income. It has a school system, K-12 and their costs are \$7100. Do you think that I can go to the superintendent of that school and tell him that he is spending \$2100 more than he needs to have an adequate education?

SENATOR FERNALD: I do.

SENATOR F. KING: You do?

SENATOR FERNALD: Yes. I think that the people in this room agree that adequacy is something less than what we are spending now. That



we are spending more than the constitutional requirement and I think that is true in the schools in my district as well. I think that people recognize that.

SENATOR F. KING: I would suggest that...I guess that I won't tell you what he told me when I asked him that question.

SENATOR BLAISDELL (In the Chair): I kind of agree with Senator Gordon, sitting up here, my ego is a little bit hurt because now I know the reason that you put me up here. The wise guy is gone and the decorum is so much better on this floor and the speeches are so much better. My ego is hurt, I want you to know.

SENATOR BELOW: I would like to speak very briefly. I appreciate the remarks of Senator Gordon and King. I agree that whatever solution we come up with, we should depersonalize it and make it the Senate solution. I very much appreciate that suggestion. Just for clarification, I did want to clarify one thing for the record. This amendment as is presented here, does not propose full funding in the first year. It actually is only appropriating \$253.7 million in the first year. It does try to get to the high level in the second year, the second year of the biennium, fiscal year 2001. But there was a handout just for your reference. Fiscal year 2000 Foundation Aide at varied amounts and the bill proposed to fund it at \$250 million for the first/next school year as a step towards full implementation with the income tax going into place January 1, 2000 and the statewide property tax going into place April 1, 2000.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Krueger.**

**The following Senators voted Yes: Below, Trombly, Disnard, Blaisdell, Fernald, Squires, Pignatelli, Larsen, Wheeler, Hollingworth, Cohen.**

**The following Senators voted No: F. King, Gordon, Johnson, Fraser, McCarley, Roberge, Francoeur, Krueger, Brown, J. King, Russman, D'Allesandro, Klemm.**

**Yeas: 11 - Nays: 13**

**Floor amendment failed.**

Senator Cohen moved to have HB 112-FN-A, increasing the tobacco tax, laid on the table.

**Question is on the motion to table.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Brown.**

**The following Senators voted Yes: F. King, Gordon, Fraser, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Squires, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler, Hollingworth, Cohen.**

**The following Senators voted No: Johnson, Roberge, Francoeur, Krueger, Brown, Klemm.**

**Yeas: 18 - Nays: 6**

**Adopted.**

**LAID ON THE TABLE**

**HB 112-FN-A**, increasing the tobacco tax.

**RESOLUTION**

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that we recess to the Call of the Chair.

**Adopted.**

**ANNOUNCEMENTS**

**SENATOR FERNALD (RULE #44):** I just want to thank all of my fellow Senators for being so attentive today to all of us who wanted to speak our piece. I really appreciate it. In speaking with you in private, I know that there are a lot of people who have their doubts about this bill and have their doubts about where their constituents stand on this bill and so I want to make something of a challenge to you. Assemble in your district the toughest audience that you can find and I will be willing to come and speak to them on this bill and answer their questions, then the two of us together can take the pulse of your district.

**LATE SESSION****HOUSE MESSAGE**

The House of Representatives has passed Bills and a Resolution with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 79**, relative to reports to the bank commissioner and to safe deposit box openings.

**HB 80**, making technical corrections in the banking laws.

**HB 203**, making impaired boating laws consistent with driving while intoxicated laws.

**HB 204-FN**, relative to driving after license revocation or suspension.

**HB 210**, reinstating the corporate charter of C. A. B. Real Estate, Inc.

**HB 213**, relative to voting by prisoners.

**HB 214**, changing the membership of and extending the reporting date for the committee to study women's health care.

**HB 215**, placing restrictions on name changes for certain felons.

**HB 218-L**, reinstating the corporate charter of Approved Industries, Inc.

**HB 236-FN-L**, relative to felonious disarming of a law enforcement officer.

**HB 268-L**, relative to the adoption and rescission of the official ballot form of meeting.

**HB 272-FN**, relative to the use of laser pointing devices.

**HB 302**, relative to paint ball guns.

**HB 306**, relative to discoverability of environmental audit reports.

**HB 358**, relative to the term of office for members of the state board of education.

**HB 365**, establishing a committee to study the current practice of posting roads and its effect on the economy.

**HB 373**, making technical corrections to the securities laws.

**HB 447**, repealing the laws prohibiting certain promotional games.

**HCR 4**, urging the U.S. Secretary of Transportation to include U.S. Route 2 as a border corridor highway.

### INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 79 - HCR 4 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

**Adopted.**

### First and Second Reading and Referral

**HB 79**, relative to reports to the bank commissioner and to safe deposit box openings. **Banks**

**HB 80**, making technical corrections in the banking laws. **Banks**

**HB 203**, making impaired boating laws consistent with driving while intoxicated laws. **Wildlife and Recreation**

**HB 204-FN**, relative to driving after license revocation or suspension. **Transportation**

**HB 210**, reinstating the corporate charter of C. A. B. Real Estate, Inc. **Executive Departments and Administration**

**HB 213**, relative to voting by prisoners. **Public Affairs**

**HB 214**, changing the membership of and extending the reporting date for the committee to study women's health care. **Public Institutions, Health and Human Services**

**HB 215**, placing restrictions on name changes for certain felons. **Judiciary**

**HB 218-L**, reinstating the corporate charter of Approved Industries, Inc. **Executive Departments and Administration**

**HB 236-FN-L**, relative to felonious disarming of a law enforcement officer. **Judiciary**

**HB 268-L**, relative to the adoption and rescission of the official ballot form of meeting. **Public Affairs**

**HB 272-FN**, relative to the use of laser pointing devices. **Judiciary**

**HB 302**, relative to paint ball guns. **Wildlife and Recreation**

**HB 306**, relative to discoverability of environmental audit reports. **Judiciary**

**HB 358**, relative to the term of office for members of the state board of education. **Education**

**HB 365**, establishing a committee to study the current practice of posting roads and its effect on the economy. **Transportation**



**HB 373**, making technical corrections to the securities laws. **Banks**  
**HB 447**, repealing the laws prohibiting certain promotional games. **Transportation**  
**HCR 4**, urging the U.S. Secretary of Transportation to include U.S. Route 2 as a border corridor highway. **Transportation**

### **Third Reading and Final Passage**

**SB 35**, establishing a study committee to investigate motor vehicle inspection requirements.

**SB 42-L**, establishing a committee to study safety improvements at the U.S. Route 1 traffic circle in the city of Portsmouth.

**SB 75**, relative to out-of-state boats.

**SB 107**, relative to fees for examination of domestic societies and foreign societies.

**SB 113**, establishing a division of travel and tourism development within the department of resources and economic development.

**SB 140**, relative to ear and body piercing.

**SB 155**, relative to the naming of certain bridges in the city of Concord.

**SB 180**, establishing a committee to study the improvement of employment opportunities offered by the state of New Hampshire for persons with disabilities.

### **In recess to the Call of the Chair.**

**SB 117**, relative to the duties of the board of trustees of the community-technical college system.

**SB 119**, relative to the withdrawal of a pupil from school.

Senator Johnson moved that the business of the day being completed moved that the Senate now adjourn until Thursday, March 25, 1999 at 9:00 a.m.

**Adopted.**

**Adjournment.**

**Out of Recess.**

### **REPORT OF COMMITTEE ON ENROLLED BILLS**

The committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill:

**HB 54**, allowing simultaneous service of a demand for rent and a notice to quit.

Senator D'Allesandro moved adoption.

**Adopted.**

### **LATE SESSION RESOLUTION**

Senator Cohen moved that the business of the day being completed that the Senate now adjourn until Thursday, March 25, 1999 at 9:00 a.m.

**Adopted.**

**Adjournment.**

*March 25, 1999*

The Senate met at 9:00 a.m.

A quorum was present.

The prayer was offered by Father David P. Jones, Senate Chaplain.

Every year in Spain a large group of people take to the narrow, twisting streets of that old city to participate in the event known as the running of the bulls. I am sure that you have seen the pictures of daring young men and women sprinting wildly in a mad pack down those crowded alley ways struggling to stay ahead of the ominous and thundering herd of sharp-horned bulls slowly gaining on them from behind. I think that you know how that feels. It is difficult in the extreme, but the key to that crazy race is not to panic, not to lose focus and not to make any abrupt or unwise spur of the moment moves. When a pack of charging bulls is at your heels and the crowds along the sidewalk are screaming a whole variety of different things that you should not panic, well that takes character and you all have that so use it today. Let us pray:

*Lord of the race, Lord of the chase, Lord of the pace: run along side these senators today as they sprint down the narrow alleyway of this decision. Protect them from the sharp horns and thundering hooves of this ominous deadline. And give them, in the midst of this raucous, screaming throng of spectators, a calm, quiet and focused determination to run carefully, deliberately and at just the right pace so that they, and we, may finish this race, all in one piece. Amen.*

Senator Roberge led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS COMMITTEE REPORTS

**SJR 1**, supporting the reduction of the sulfur content of gasoline. Environment Committee. Vote 7-0. Ought to Pass, Senator Cohen for the committee.

**SENATOR COHEN:** Significant reductions in fuel sulfur content is essential for the introduction of new, cleaner, and more efficient motor vehicle technologies. Passage of SJR 1 ensures that both the EPA and the White House Office of Management and Budget (OMB) receive a clear, firm, and consistent message from New Hampshire. The sulfur content of fuel is important because many studies have documented that sulfur "poisons" the advanced technology of catalytic converters that make today's low emission vehicles possible. Reductions of sulfur will, in turn, reduce nitrogen oxide emissions in today's vehicles. In addition, carbon monoxide emissions and emissions of volatile compounds would also decrease with the reduction of sulfur content of gasoline. As we focus on taxes on education, it is important to remember that we must protect our health and our air. I urge you to think of our health and the environment, and pass SJR 1. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 93**, permitting a dam to be constructed on Rand Pond in Goshen. Environment Committee. Vote 6-0. Ought to Pass, Senator Pignatelli for the committee.

SENATOR PIGNATELLI: I rise in support of HB 93. This legislation would authorize the town of Goshen to construct a dam at the natural outlet of Rand Pond. DES testified that this bill, if passed, would allow the town to build a dam if they so choose; however, the town would still have to put in an application for a construction permit. There is no anticipated environmental impact from this proposal and I urge you to pass HB 93 for the town of Goshen. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 207-FN-A**, directing the office of state planning to conduct a study of the effects of sprawl in the state and making an appropriation therefor. Environment Committee. Vote 5-0. Ought to pass with amendment, Senator Pignatelli for the committee.

**1999-0461s**

**05/10**

### **Amendment to HB 207-FN-A**

Amend paragraph I of section 2 of the bill by replacing it with the following:

I. The office of state planning is authorized to conduct a study of the effects of sprawl in New Hampshire. The study shall examine the effects of sprawl on the economy, taxes, loss of open land, air quality, water quality, wildlife habitat, tourism, community identity and quality of life. The study shall make recommendations on local, regional and state growth management and associated legislative initiatives.

SENATOR PIGNATELLI: I rise in support of HB 207 as amended. This legislation is the result of a study committee established in 1998. The study committee determined that more information about the effects of sprawl is needed to characterize the problem and inform decision-makers. The study, as described in the bill, will comprehensively address the various consequences of sprawl. It calls for specific recommendations to reduce the impact of sprawl and would focus on local, regional and state growth management and associated legislative initiatives. New Hampshire is back in a growth cycle. Current estimates are that our population is increasing at the rate of 14,000 to 15,000 people a year and will continue to do so in the foreseeable future. In order to preserve those qualities that make New Hampshire unique, it is important to understand all of the pressures related to growth in the state and to take whatever steps may be necessary to accommodate the growth in a manner which preserves our natural communities and surrounding landscapes. I urge your support of HB 207 as amended. Thank you.

**Amendment adopted.**

**Ordered to third reading.**

**SB 72**, exempting certain portions of Seabrook Beach Village District and certain portions of Hampton Beach from certain provisions of the excavating, filling, and construction permit laws. Environment Committee. Vote 7-0. Inexpedient to Legislate, Senator Cohen for the committee.

SENATOR COHEN: The legislation on this bill was introduced at the request of citizens in the seacoast districts concerned by certain laws and the way that these laws are interpreted. The Department of Environmental Services testified that exempting the specific areas listed in the bill, would not result in any significant environmental harm; however,



they say that they are in the process of developing rules that will address the exemptions in the specified areas. Overall, the committee believed that this issue may be adequately addressed through the rule making process, making the bill unnecessary. The committee recommends inexpedient to legislate. Thank you.

**SENATOR HOLLINGWORTH:** I will ask the Senate to support the committee report, but I would also like to reserve that if the rules are not forthcoming as they promise, and since they have clearly stated that the bill would not in any way, do anything to impede what they need to have happen for inspection, I would like to say that if their promise to do the rules expeditiously does not happen, I would like to ask that this Senate would uphold the will and go ahead with the legislation. Thank you.

Senator D'Allesandro moved to have **SB 72**, exempting certain portions of Seabrook Beach Village District and certain portions of Hampton Beach from certain provisions of the excavating, filling, and construction permit laws, laid on the table.

**Adopted.**

### **LAI D ON THE TABLE**

**SB 72**, exempting certain portions of Seabrook Beach Village District and certain portions of Hampton Beach from certain provisions of the excavating, filling, and construction permit laws.

**SB 135**, relative to the water supply land protection grants. Environment Committee. Vote 7-0. Ought to Pass, Senator Cohen for the committee.

**SENATOR COHEN:** Water supply in the state of New Hampshire will continue to be a growing issue in the next 10 to 20 years in the state of New Hampshire. Passage of this bill would result in a permanent protection of critical water supply lands statewide. Protection of public health, via protection of the water that we drink is also a goal of this legislation, providing a natural protective buffer around drinking water supplies is far more cost effective than the alternatives of treating or remediating contaminated water or searching for new sources of drinking water. Currently only 11 percent of public water supply land is protected around the state. This matching grants program proposed in this bill is a cost effective approach to addressing this significant problem: In addition, this protection of critical water supply lands will aide in the conservation of a wide range of wildlife habitats across the state. I urge you to recognize the critical importance of protecting our water supplies as we take this proactive step in passing SB 135. Thank you.

**SENATOR F. KING:** Senator Cohen, the matching program... I apologize, I just read this bill for the first time. How does the matching work?

**SENATOR COHEN:** If you give me a minute, I will look through the bill. I wish that Senator Russman were here, this is his bill and he could speak to you about it.

Senator J. King moved to have **SB 135**, relative to the water supply land protection grants, laid on the table.

**Adopted.**

### **LAI D ON THE TABLE**

**SB 135**, relative to the water supply land protection grants.

**HB 248**, relative to the Monadnock advisory commission. Executive Departments and Administration Committee. Vote 4-0. Ought to Pass, Senator Brown for the committee.

**SENATOR BROWN:** This bill allows the Monadnock Advisory Commission to accept gifts, grants, and donations for the benefit of Mount Monadnock, Little Monadnock, and Gap Mountain. Many people like to give gifts for the preservation of Mount Monadnock, but the commission is not currently empowered to accept them. This bill allows for the acceptance of gifts, as well as the determination of how the gifts should be used, though only for the preservation of these mountains and for the public's benefit. This bill also allows the commission to define itself tax exempt, and the committee recommends that the bill ought to pass.

**SENATOR FERNALD:** People should know that the Mount Monadnock is the second most climbed mountain in the world. There is a state park at the base and it is a wonderful place for families to go and to hike, which they do in great numbers. There has been a history over the past years of many gifts by individuals to preserve the mountaintop and also Gap Mountain and Little Monadnock Mountain and, we should encourage the process by passing this. Thank you.

**Adopted.**

**Ordered to third reading.**

**CACR 20**, relating to the election of governor and senators. Providing that beginning with the 2002 general election, and every 4 years thereafter, the governor and senators shall be elected. Internal Affairs Committee. Vote 5-1. Inexpedient to Legislate, Senator Francoeur for the committee.

**SENATOR FRANCOEUR:** This constitutional amendment concurrent resolution would have provided that beginning in the year 2002 the governor and state Senators would be elected to four-year terms. The majority of the committee felt that the current terms of office for both the governor and state Senators are appropriate. Two-year terms for elected officials in the legislature and governor provide the appropriate checks and balances necessary in government. The committee recommends that this bill is inexpedient to legislate.

**SENATOR WHEELER:** I rise in opposition to the inexpedient motion. When I filed this CACR, my first thought was that this would be the most direct way to have campaign finance reform. We are a state of a 1.2 million people and we have gubernatorial elections every two years where each candidate is spending upwards of a million dollars. I don't think that this is an appropriate use of money. I think that it puts too much money into politics. One of the quickest ways to get money out of politics would be to at least have a four-year term for governor. I know that we all have to raise money too. We get \$100 a year and we raise thousands of dollars every two years to run for the Senate. I think that this is an inappropriate use of our time and energy and inappropriate use of the people's money, those contributors to our campaigns to have to do this every two years. But a second, more compelling reason beyond campaign finance reform has become apparent now as we debate the important issues before us of making major changes to our tax policy and to the way that we support public education. We are not thinking long-term. We are very concerned with what is going to happen directly in the next year, the next time that we are all running for re-election, we want us to have some direct results shown to the people to show that we have been worth our \$100 up here and it is very hard to plan for the long-term in two-year intervals. It infuses important decisions with a political overlay, which shouldn't be there. I urge you to reconsider and

realize that the best thing that we could do for our decision making and for campaign finance reform would be to pass these four-year terms. Thank you.

**SENATOR SQUIRES:** Senator Francoeur, over the last two years, we have considerable discussions about a number of amendments that have been phrased along the way, "let the people speak" and so I am wondering if in the committee's discussion on this issue how you addressed that? Does this not seem to be a sufficient level that the people should speak or did it just not seem appropriate? What did the committee say about that issue? What is it that some issues command a necessity to let the people speak and others we kill here and do not let the people speak?

**SENATOR FRANCOEUR:** Senator Squires, there was, I believe, testimony from one or two individuals at the hearing on this bill. It was not heavily contested, either way. I think that this has been a discussion that I have seen in the legislature numerous times myself and a lot of the other Senators have said the same thing. I think that it was more of an individual belief. A lot of Senators had mentioned that they thought that if there were two-year elections every election, if the people don't like what we do with Claremont, then in two years they will have the final say, not in four years. So they believe that by having, as I said in the previous speech, that it gave the appropriate checks and balances that we needed.

**SENATOR K. WHEELER:** Senator Francoeur, are you aware of the fact that at the time of this hearing, it was at the moment that the House was debating HB 109, if you want to wonder why there weren't very many people in that room at that time? Were you aware of that fact?

**SENATOR FRANCOEUR:** I believe that this bill is only for Senators and the governor. We did not hear from any House members nor receive any written testimony from them even though they couldn't come over and speak in person at the hearing. Usually during a House session, if any of the members want to voice their opinions, they run over, back and forth, or they hand in written testimony.

**SENATOR WHEELER:** Are you aware also, that the House is dealing with the four-year term for governor? Their House never of course, as I am sure you would believe, never like a four-year term for the Senate, but, would you believe that the House and many people who are not in the House, but were following the debate on the income tax, had a few other things on their minds that afternoon?

**SENATOR FRANCOEUR:** I would believe that they, if they so chose that they could amend their bill to include the governor and the Senate if they want to have a shot at it that way.

Senator D'Allesandro moved to have **CACR 20**, relating to the election of governor and senators. Providing that beginning with the 2002 general election, and every 4 years thereafter, the governor and senators shall be elected, laid on the table.

**Adopted.**

#### **LAIID ON THE TABLE**

**CACR 20**, relating to the election of governor and senators. Providing that beginning with the 2002 general election, and every 4 years thereafter, the governor and senators shall be elected.

**SB 124**, establishing a committee to study the integration of technology at the state and municipal level. Internal Affairs Committee. Vote 6-0. Ought to Pass, Senator Klemm for the committee.



SENATOR KLEMM: Senate Bill 124 provides some much needed concentration and legislative oversight to the integration of state and local technology. Millions of dollars are allocated and spent annually by the state and municipalities on technology. The integration of technology requires proper coordination and input from both the state and municipalities. This committee will dedicate itself to these specific integration issues, giving them the attention, oversight and perspective that is critical for long term success. The committee recommends this bill ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 222-FN-A-L**, relative to guarantee of loans to local development organizations. Internal Affairs Committee. Vote 6-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: Mr. President, this bill establishes guarantees of loans to local development organizations through the Business Finance Authority. Local development organizations are important for development, but because they are so small, they have difficulty securing lending capital. With this bill, the local development organizations will have the benefit of Business Finance Authority backing which will make it easier to secure funds for local projects. The Business Finance Authority is limited in the amount of funds that they can back under this piece of legislation, though this ability to back loans does not raise the Business Finance Authority's total cap on monies they are allowed to guarantee. All actions under this legislation must, in the end, have the approval of the governor and council. The committee recognizes that local development organizations are important to communities and this bill supports their ability to act. The committee was unanimous in recommending this bill ought to pass.

**Recess**

**Out of Recess.**

**Adopted.**

**Ordered to third reading.**

**SB 64**, relative to powers of appointment. Judiciary Committee. Vote 6-0. Ought to pass with amendment, Senator Fernald for the committee.

**1999-0499s**

**08/10**

### **Amendment to SB 64**

Amend the bill by replacing all after section 1 with the following:

#### **2 Applicability of Act.**

I. On and after the effective date of this act, this act shall apply to all testamentary powers of appointment created by will or by trust executed on or after the effective date of this act, and to testamentary powers of appointment created by will or trust described in Section 1433(b)(2) of the Tax Reform Act of 1986, Pub. L. No. 99-514, as amended.

II. Notwithstanding the foregoing, this act shall not apply to any of the following:

(a) Any testamentary powers of appointment created pursuant to the terms of a trust executed prior to the effective date of this act and for which a federal estate tax marital deduction was allowed with respect to the donor's estate pursuant to Internal Revenue Code Section 2056(b)(5) or Section 2523(e).

(b) Any testamentary powers of appointment created by will or trust executed prior to the effective date of this act where the donee of the power has exercised or attempted to exercise such testamentary power of appointment in favor of the donee's estate, creditors of the donee, or creditors of the estate of the donee, in accordance with the provisions of the instrument creating the power, which exercise or attempted exercise is made in a document executed prior to the effective date of this act.

(c) Nontestamentary powers of appointment, whether created before or after the effective date of this act.

**3 Effective Date.** This act shall take effect upon its passage.

**SENATOR FERNALD:** This is a question of federal state tax law and the state law of powers of appointment. At the risk of boring you all, I will tell you very briefly what it is all about. If you have an estate when you die that is worth more than \$650,000 you have to pay a state tax and the percentage is in the 30 percent range and goes up as your estate gets bigger. A power of appointment is a statement in a trust that allows a person to decide where the money in the trust goes when the trust terminates. You can appoint the money to somebody else. You can have a general power of appointment which means that you can appoint it to anybody including yourself, or you can have a special power of appointment which means that you can appoint it to only certain people, excluding yourself. If you have the general power of appointment and you can appoint it to yourself, the federal tax law considers it your money, whether you gave it to yourself or not, so that when you die, it is in your estate and you get taxed on this money in your estate whether you took it or not. Out of 31 percent rate or greater, it is a lot of money if this money is counted as being in your estate. Under New Hampshire law, there are some powers of appointment that you cannot tell if they are general or special and this bill is intended to create a presumption that if it is unclear, then it is going to be special power of appointment, so that the money doesn't go into your estate and Uncle Sam doesn't get a cut. This was drafted by a committee of estate planning attorneys. We had a very knowledgeable attorney who came in and testified before the committee at length about all of the intricacies of generation skipping tax and other stuff. I guess what I want to say is that this will save New Hampshire people money on their estate tax returns. It has been vetted by all those green eye shade estate planning attorney's. Please support it.

**Amendment adopted.**

**Ordered to third reading.**

**SB 109**, deleting the witnessing requirement for notices of lease. Judiciary Committee. Vote 7-0. Ought to Pass, Senator Gordon for the committee.

**SENATOR GORDON:** Back in 1981 the legislature recognized that there was no longer a need to provide a witness on deeds when the deed was acknowledged by either a notary public or a justice of the peace. Since that time, the legislature has decided that other interest in real estate no longer requires a witness requirement. Two years ago we repealed a requirement for a witness on a manufactured housing deed. This bill continues the trend and eliminates the witness requirement on leases. This is very important as the current law often causes confusion for title abstractors and for title opinions. The committee supports the passage of SB 109 and urges your support.

**Adopted.**

**Ordered to third reading.**

**SB 111**, relative to requirements for acknowledgements and jurats by justices of the peace. Judiciary Committee. Vote 6-0. Ought to pass with amendment, Senator Gordon for the committee.

**1999-0505s**

**09/10**

### **Amendment to SB 111**

Amend RSA 455-A:3 as inserted by section 1 of the bill by replacing it with the following:

455-A:3 Powers. Every justice of the peace shall have the power to administer oaths, perform marriage ceremonies, acknowledge instruments, and any other power prescribed by law. *A justice of the peace signing an acknowledgment or jurat on any document or instrument shall type, print, or stamp the name of the justice of the peace on the document or instrument; however, failure to meet this requirement shall not impair the legal validity of any acknowledgment or jurat.*

SENATOR GORDON: Currently, as many of you know, on documents that are recorded at the registry, they need to be acknowledged or in many cases an oath needs to be taken in order to make those documents official under state requirements. Currently if a notary public takes the oath or takes the acknowledgement, they're required to make their name legible on the document. The purpose of that is that if some title abstractor in the future will know who in fact the notary public was. We don't have a similar requirement for justices of the peace and justices of the peace can also do acknowledgements and take oaths, and, as a result in many cases, documents get recorded and the handwriting of the justice of the peace is illegible and this may cause in fact, a problem with the title on real estate. This bill, SB 111 would require justices of the peace to either print, stamp or in some way, make recognizable their name on the documents in which they sign.

**Amendment adopted.**

**Ordered to third reading.**

**SB 112**, relative to the guardianship of minors. Judiciary Committee. Vote 6-0. Ought to pass with amendment, Senator Gordon for the committee.

**1999-0471s**

**04/01**

### **Amendment to SB 112**

Amend RSA 458-A:2, III as inserted by section 1 of the bill by replacing it with the following:

III. "Custody proceeding" includes proceedings in which a custody determination is at issue or is one of several issues, including any action or proceeding brought to annul a marriage or to declare the nullity of a void marriage, or for a separation, or for a divorce, *or relative to the guardianship of a minor*, but not including proceedings for adoption, child protective proceedings or proceedings for permanent termination of parental custody, or proceedings involving the guardianship and custody of neglected or dependent children *pursuant to RSA 169-B, 169-C, or 169-D.*

SENATOR GORDON: This bill makes a simple change in the law having to do with marital matters. What has happened in some cases is that



there is some confusion as to who has jurisdiction over children who are subject to guardianship proceedings or child protective proceedings. What happens is that if a child is going through a process of a child protective proceeding, but at the same time the parents are going through a divorce, both courts could end up issuing orders having to do with the care, guardianship of the child. There is language that was intended to be clear which says that the district court has the jurisdiction over child protective proceedings and proceedings regarding neglected or dependent children. Unfortunately, the Superior Court has in times, not interpreted that in a manner, which would indicate that they do not have jurisdiction in marital matters. This bill simply adds language specifically referring to the statutes to make clear to the courts which of the two courts has jurisdiction in those matters. We urge ought to pass on SB 112.

**Amendment adopted.**

**Ordered to third reading.**

**SB 125**, prohibiting prison inmates and persons on probation or parole from changing their names. Judiciary Committee. Vote 6-0. Ought to pass with amendment, Senator Gordon for the committee.

**1999-0506s**

**09/01**

### **Amendment to SB 125**

Amend the title of the bill by replacing it with the following:

AN ACT placing restrictions on name changes for certain felons.

Amend the bill by replacing all after the enacting clause with the following:

1 Change of Name. RSA 547:3-i is repealed and reenacted to read as follows:

547:3-i Change of Name.

I. The probate court may grant the petition of any person to change the name of that person or the name of another person, with the exception of a person serving a prison sentence or on probation or parole, or required to register as a sexual offender or an offender against children pursuant to RSA 651-B. The court shall not require the petitioner to obtain consents to the name change. Except as provided in paragraph II, the court may proceed with or without notice, in accordance with RSA 550:4.

II. The court may override the exception under paragraph I only if the petitioner makes a compelling showing that a name change is necessary.

III. Before the probate court may grant a change of name pursuant to this section, the person petitioning for a name change shall serve a copy of the petition on the department of corrections if the person is incarcerated or on probation or parole, or on the department of safety if the person is required to register as a sexual offender or an offender against children and is no longer subject to supervision by the department of corrections.

2 Name Change; Duty to Inform. Amend RSA 651-B:5 to read as follows:

651-B:5 Change of *Name or Alias or Address*; Duty to Inform. When any person required to be registered under this chapter changes residence, the person shall give written notification of the person's new address to the local law enforcement agency to which ~~he~~ **such person** last reported under RSA 651-B:4 within 10 days of such change of residence. Such notice shall not relieve the person of the duty to report under RSA 651-B:4 at the new place of residence. The local law

enforcement agency receiving such notice shall forward a copy to the division within 3 days after receipt. The division shall notify the local law enforcement agency at the new place of residence, or the appropriate out-of-state law enforcement agency if the new place of residence is outside New Hampshire, and shall include such change-of-address information in the LENS system. *Persons required to report address changes in this section shall also have a duty to inform local law enforcement of any name or alias changes.*

3 Effective Date. This act shall take effect January 1, 2000.

1999-0506s

#### AMENDED ANALYSIS

This bill places certain restrictions on the rights of certain felons to legally change their names.

SENATOR GORDON: This bill prohibits people in prison or on parole from changing their names and the reason that this is being done is to be consistent with reporting requirements. The intent is to not allow in particular, certain offenders who have a requirement to report in the state to avoid detection or avoid notice simply by going to the probate court and changing their name. We urge ought to pass on SB 125.

**Amendment adopted.**

**Ordered to third reading.**

**SB 130**, establishing a committee to study issues regarding procedures and standards for selection and supervision of court-appointed guardians ad litem. Judiciary Committee. Vote 5-0. Ought to pass with amendment, Senator Trombly for the committee.

1999-0465s

08/01

#### Amendment to SB 130

Amend the bill by replacing section 6 with the following:

6 Effective Date. This act shall take effect upon its passage.

SENATOR TROMBLY: Senate Bill 130 establishing a committee to study issues regarding procedures and standards for selection and supervision of court-appointed guardians ad litem and also to review the practices and duties of the guardian while they are performing their duties. As you know, guardians are an important part in custodial matters and there has been questions raised about the effectiveness in the manner in which some guardians perform their duties. I think that significantly, the sponsor of the bill also said that the committee would examine the payment and the financial arrangements with payment of guardian ad litem in those cases. The amendment simply changes the effective date from 60 days after passage to immediately upon passage. We would ask for your support of the committee report.

**Amendment adopted.**

**Ordered to third reading.**

**SB 150**, making certain reference changes to the department of youth development services. Public Institutions, Health and Human Services Committee. Vote 6-0. Ought to pass with amendment, Senator Wheeler for the committee.

1999-0521s

04/03

**Amendment to SB 150**

Amend the bill by replacing all after the enacting clause with the following:

1 Delinquent Children; Reference to the Department of Youth Development Services Added. Amend RSA 169-B:19, III-a (a) to read as follows:

III-a.(a) Prior to the seventeenth birthday of a minor who had been adjudicated delinquent for committing a violent crime as defined in RSA 169-B:35-a, I(c), or who had been petitioned to court on 4 or more occasions and adjudicated delinquent in 4 separate adjudicatory hearings which alleged misdemeanor or felony offenses, the prosecutor or the department of health and human services may file a motion with the court to extend jurisdiction pursuant to RSA 169-B:4, V. ***The department of youth development services may file a motion to extend jurisdiction for any minor committed to its custody pursuant to RSA 169-B:19, I(j).*** The department of corrections shall be served a copy of the motion and be a party to the proceeding.

2 New Subparagraph; Juvenile Case and Court Records; Accessibility of Records Amended. Amend RSA 169-B:35, III by inserting after subparagraph (b) the following new subparagraph:

(c) The commissioner of the department of youth development services shall have access to all records in the possession of the department of health and human services concerning minors committed to the custody of the department of youth development services pursuant to RSA 169-B:19, I(j), or detained or placed at facilities operated by the department.

3 Administrative Release; Definition Amended. Amend RSA 170-H:2, I to read as follows:

I. "Administrative release to parole" means an administrative procedure to provide a period of community adjustment before parole status is granted ~~[subject to approval of the juvenile parole board at its next regular meeting]~~.

4 New Paragraph; Parole of Delinquents; Definitions; Reference to Commissioner of Youth Development Services Added. Amend RSA 170-H:2 by inserting after paragraph IV the following new paragraph:

IV-a. "Commissioner" means the commissioner of the department of youth development services.

5 Parole of Delinquents; Definitions; Reference to Commissioner of Youth Development Services Added; Age Changed. Amend RSA 170-H:2, V to read as follows:

V. "Delinquent" means any person under ~~[18]~~ 17 years of age who has been adjudicated delinquent by a district or superior court and committed to the custody of the ~~[administrator]~~ **commissioner**.

6 Parole of Delinquents; Administrative Release Amended. Amend RSA 170-H:5 to read as follows:

The ~~[administrator]~~ **commissioner**, if he **or she** determines it is in the best interests of a delinquent and the public, may place a delinquent in ~~[his]~~ custody on administrative release. ~~[Such]~~ ***Except in cases of emergency as determined by the commissioner, such*** an administrative release shall be in effect for no longer than 30 days.

7 Parole of Delinquents; Reference Amended. Amend RSA 170-H:7 to read as follows:

170-H:7 Juvenile Parole Records. The board shall have access to all juvenile ~~[parole]~~ records of the department. ***Notwithstanding any pro-***



*vision of law to the contrary, the board shall have access to all records in the possession of the department of health and human services concerning juveniles committed to the custody of the department of youth development services pursuant to RSA 169-B:19, I(j).* The board shall review the records of the department for each offender in its custody at least once every 36 months.

8 Parole of Delinquents; Effect of Recommittal; Age of Delinquency and Reference Amended. Amend RSA 170-H:11 to read as follows:

170-H:11 Effect of Recommittal. Any delinquent whose parole is revoked shall be returned to the custody of the ~~administrator~~ **commissioner**. The offender may at any time prior to his ~~eighteenth~~ **or her seventeenth** birthday be paroled again. If not paroled, a delinquent shall remain in custody until his ~~eighteenth~~ **or her seventeenth** birthday.

9 Parole of Delinquents; Reference Amended. Amend RSA 170-H:13, I to read as follows:

I. The juvenile parole board shall be administratively attached to the department of ~~health and human~~ **youth development** services.

10 Parole of Delinquents; Reference Amended. Amend RSA 170-H:13, II(a) to read as follows:

(a) Exercise its powers, duties, functions and responsibilities independently of the department of ~~health and human~~ **youth development** services and without approval or control of the department, except as otherwise specifically provided by statute;

11 Parole of Delinquents; Reference Amended. Amend the introductory paragraph of RSA 170-H:13, III to read as follows:

III. The department of ~~health and human~~ **youth development** services shall:

12 Youth Development Center; Administrative Release to Parole Amended. Amend RSA 621:3, I to read as follows:

I. "Administrative release to parole" means an administrative procedure to provide a period of community adjustment before parole status is granted[, subject to approval by the department at its next regular meeting].

13 Youth Development Services; Authority to Apprehend Amended. Amend RSA 621:33 to read as follows:

621:33 Authority to Apprehend. Certain employees of the ~~center~~ **department** who satisfactorily complete a prescribed course of instruction and are certified by the ~~administrator of the bureau of residential services~~ **commissioner** shall be designated as ex officio constables to possess general police powers, including the power of arrest, but limited as follows:

I. These powers shall extend to employees only during the period of duty with the ~~center~~ **department**.

II. These powers shall extend only to property controlled by the ~~center~~ **department** with 3 exceptions:

(a) When an employee is in hot pursuit of a person who has committed a crime while on grounds, in buildings, or in vehicles controlled by the ~~center~~ **department**;

(b) When an on duty employee observes a child whom the employee knows has escaped from the ~~center~~ **department** or failed to return from furlough, or who is in violation of the terms of parole; or

(c) When an employee is transporting a detained or committed child to another location.

14 Youth Development Services; Rulemaking Amended. Amend RSA 621-A:4, IV to read as follows:

IV. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the management of the youth services center *and the youth development center, and all other facilities and programs operated by the department* and all persons connected with the youth services center, *the youth development center and all other facilities and programs operated by the department*, and for the admission and care of children at the youth services center, *the youth development center and all other facilities and programs operated by the department*.

15 Youth Development Services; Rulemaking Amended. Amend RSA 621-A:8, I to read as follows:

I. The management of the youth services center, *the youth development center and all other facilities and programs operated by the department* and the admission and care of children at the youth services center, *the youth development center and all other facilities and programs operated by the department* pursuant to RSA 621-A:4, IV.

16 Reference Changes. Amend the following RSA provisions by replacing "administrator" with "commissioner": RSA 170-H:4, I-II; 170-H:8; and 170-H:10.

17 Repeal. The following are repealed:

I. RSA 170-H:2, II, relative to definition of administrator for the department of youth development services.

II. RSA 621:35, relative to the rulemaking authority of the commissioner of health and human services over the youth development center.

III. 1988, 197:12, relative to the certification of shelter care and detention beds.

IV. 1990, 201:16, relative to extending the deadline for certification of shelter care and detention beds.

18 Effective Date. This act shall take effect upon its passage.

SENATOR WHEELER: I rise in support of SB 150 which is basically a housekeeping bill. This past November, the Legislative Budget Assistant, also known as LBA, released a performance audit of the state of New Hampshire Juvenile Justice Organization. Since that time representatives of the Department of Health and Human Services and the Department of Youth Development Services have worked diligently to respond to the recommendations contained in the audit. The departments have completed their negotiations and have drafted a comprehensive inter-agency agreement addressing all areas of practice regarding juveniles committed to the custody of DYDS. Both departments are working to assist the Juvenile Parole Board to address the LBA recommendations regarding the operations of the board. The amendment to this bill addresses all of the LBA recommendations requiring statutory change including technical changes, changes in response to specific LBA recommendations and changes to improve the communication and cooperation of the departments. Both DHHS and DYDS have worked extremely hard and have made a commitment to work together. I urge you to support their efforts and pass SB 150 as amended. Thank you.

**Amendment adopted.**

**Ordered to third reading.**

**SB 164**, relative to persons exempted from the registration of ophthalmic dispensers. Public Institutions, Health and Human Services Committee. Vote 6-0. Ought to pass with amendment, Senator McCarley for the committee.

1999-0522s

10/03

**Amendment to SB 164**

Amend the bill by replacing all after the enacting clause with the following:

1 Ophthalmic Dispensers; Application of Chapter. Amend RSA 327-A:13, IV to read as follows:

IV. The activities of any employee of an ophthalmic dispenser, *licensed physician, or optometrist if the employee is* not engaged in [the] *ophthalmic* dispensing [~~of eyeglasses or contact lenses including, but not limited to, the sale of related products, laboratory technicians and the making of minor mechanical repairs upon eyeglasses or frames~~] *as defined in RSA 327-A:1, I.*

2 Repeal. RSA 327-A:13, II, relative to activities of ancillary personnel in ophthalmic dispensing, is repealed.

3 Effective Date. This act shall take effect 60 days after its passage.

1999-0522s

**AMENDED ANALYSIS**

This bill clarifies the application of the registration requirement for persons in ophthalmic dispensing.

SENATOR MCCARLEY: Senate Bill 164 as amended states that all opticians must register with the state if they are in the business of ophthalmic dispensing. This bill only applies to those individuals engaged in ophthalmic dispensing. Clarification of this statute will allow the Department of Health and Human Services to begin the process of registering opticians. I ask your support for SB 164 as amended. Thank you.

**Amendment adopted.**

**Ordered to third reading.**

**SB 169-FN-A**, establishing a commission to study the department of health and human services and making an appropriation therefor. Public Institutions, Health and Human Services Committee. Vote 6-0. Inexpedient to Legislate, Senator Krueger for the committee.

SENATOR KRUEGER: I rise in opposition to SB 169. As we all know, the Department of Health and Human Services is a massive and very complex agency, coupled with the fact that the legislature has continued to delegate numerous responsibilities to this department. I understand that it is beneficial for any agency to undergo periodic review to improve efficiency, communication and to ensure cost effective operation; however, the committee feels that a commission to study the DHHS is unnecessary at this time. Commissioner Shumway has just recently assumed responsibility for the department. I really believe that it is in his best interest and in ours, to allow him the courtesy of time and the opportunity to evaluate his department before the Senate proposes to do it for him. In addition, I see this bill as an open door. This bill could easily be used as a vehicle to increase funding for DHHS without good reason. I feel strongly that the commission to study DHHS proposed by this legislation is an unnecessary, burdensome request and an unnecessary use of \$100,000 of the states' money. I urge you to vote SB 169 inexpedient to legislate. Thank you very much.

**Committee report of inexpedient to legislate is adopted.**



**TAKEN OFF THE TABLE**

Senator Cohen moved to have **SB 72**, exempting certain portions of Seabrook Beach Village District and certain portions of Hampton Beach from certain provisions of the excavating, filling, and construction permit laws, taken off the table.

**Adopted.**

**SB 72**, exempting certain portions of Seabrook Beach Village District and certain portions of Hampton Beach from certain provisions of the excavating, filling, and construction permit laws.

**SENATOR RUSSMAN:** My understanding is that Senator King would like to speak on the bill but is now in support of it.

**SENATOR TROMBLY:** I think that the bill in question was SB 135. Senator Trombly moved to have **SB 72**, exempting certain portions of Seabrook Beach Village District and certain portions of Hampton Beach from certain provisions of the excavating, filling, and construction permit laws, laid on the table.

**Adopted.**

**LAID ON THE TABLE**

**SB 72**, exempting certain portions of Seabrook Beach Village District and certain portions of Hampton Beach from certain provisions of the excavating, filling, and construction permit laws.

**TAKEN OFF THE TABLE**

Senator Cohen moved to have **SB 135**, relative to the water supply land protection grants, taken off the table.

**Adopted.**

**SB 135**, relative to the water supply land protection grants.

**SENATOR RUSSMAN:** Well actually Senator King has always figured out things on his own and I believe that he wishes to speak to the bill and would now support it.

**SENATOR F. KING:** Now I have read the bill and if I would have had the chance to do that before we wouldn't have had to table it, I guess. My concern is that this legislation, this bill, which I am sure is important, it requires communities to spend money and allows the state to pay a portion of that cost. It also requires that this go through the rulemaking process. Having been on the rulemaking committee for going on five years now, my concern is that when DES comes in with their rules and implements this law, it is always a question of whether it is an unfunded mandate or not. The question revolves around whether or not they're making the requirements on our communities greater than the requirements that are placed in our communities by the federal government? The state is paying 50 percent in the first instance and then up to 10 percent if the money is available in the second instance to help amortize the debt, I have a real question of whether this bill could result in a 28-a issue? I don't think that the question could be answered here today, but I guess that in the future that these bills would make it clear that if the state mandates requirements on our communities are greater than the federal law then they ought to pay all of the costs. If I had known, I would have had an amendment for this bill.

**SENATOR FERNALD:** Senator Russman, I have been reading through this, are there any mandates in here or is this bill just revenue sharing?

SENATOR RUSSMAN: No, it is voluntary for the communities.

**Recess.**

**Out of recess.**

**Question is on the committee report of ought to pass.**

**Adopted.**

**Referred to the Finance Committee (Rule #24).**

**Recess.**

**Out of Recess.**

### **TAKEN OFF THE TABLE**

Senator F. King moved to have **HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products, taken off the table.

**Adopted.**

**HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products.

Senator F. King offered a floor amendment.

**1999-0566s**

**04/03**

### **Floor Amendment to HB 112-FN-A**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to establishing the cost of an adequate education, and relative to creating a commission to study the methodology used in establishing the cost of an adequate education, and making an appropriation therefor.

Amend the bill by replacing all after the enacting clause with the following:

#### **1 Findings.**

I. In December 1997, the New Hampshire supreme court in the Claremont II decision ruled that it is the state's duty to define and provide all New Hampshire's public school students with an adequate education, and further that the manner of raising revenue to pay for an adequate education be through a system of taxation that is proportional in substance and just and reasonable in application.

II. Through the passage of House Bill 1075, the general court defined an adequate education. The definition grew out of work undertaken in the early 1990's to develop curriculum frameworks which specifically address the importance of establishing and measuring what all New Hampshire students should know and be able to do. The curriculum frameworks were developed with the widespread participation of educators, business people, government officials, community representatives, and parents. They have evolved into a critical component of providing a quality public education to New Hampshire students.

2 New Subdivision; Adequate Public Education; Adequate Education and Education Financing Reform Commission Established. Amend RSA 193-E by inserting after section 3 the following new subdivision:

Adequate Education and Education

Financing Reform Commission

193-E:4 Adequate Education and Education Financing Reform Commission Established; Membership.

I. There is hereby established an adequate education and education financing reform commission which shall be composed of 22 members as follows:

(a) Three house members, including one member of the education committee, one member of the finance committee, and one member of the minority party, appointed by the speaker of the house.

(b) Three senators, including one member of the education committee, one member of the finance committee, and one member of the minority party, appointed by the senate president.

(c) Four members appointed by the governor, one of whom shall be an elementary or secondary special education teacher, one of whom shall be a primary teacher who does not teach special education, and one of whom shall be a member of the business community.

(d) The commissioner of the department of education or designee.

(e) The chancellor of the university system of New Hampshire or designee.

(f) The commissioner of the regional community-technical college system.

(g) One member from the state board of education, appointed by the chairperson of the state board of education.

(h) One member from a special education advocacy organization, appointed by such organization; and

(i) Seven members who shall be agreed to and jointly appointed by the governor, the president of the senate, and the speaker of the house consisting of the following:

(1) One local school board member, recommended by the New Hampshire School Boards Association.

(2) One school administrator, recommended by the New Hampshire School Administrators Association.

(3) One special education administrator at the elementary or secondary school level, recommended by the New Hampshire Association of Special Education Administrators.

(4) Two parents of school-age children, one of whom shall be the parent of a child with an educational disability.

(5) One member from the business community, who shall be associated with the School to Work Initiative.

(6) One school business official, recommended by the New Hampshire Association of School Business Officials.

II. The commission shall elect a chairperson from among its membership and shall form subcommittees necessary to perform its duties. The chairperson shall determine the frequency of meetings at its first meeting.

III. The members of the commission shall serve without compensation, provided that legislative members of the commission shall receive mileage at the legislative rate while attending to the duties of the commission, and provided that the parent members of the commission shall be reimbursed for travel expenses associated with their duties on the commission.

IV. In order to ensure that all students are provided an adequate education, the duties of the commission shall be as follows:

(a) Determine and recommend the costs of an adequate education for all students in New Hampshire by determining and calculating adjustments for individual school districts based on yearly inflation, cost of living variances, diseconomies of scale, transportation variability, demographics, including for school districts with a disproportionate number of students who are economically disadvantaged or have educational disabilities, and such other factors as deemed relevant.



(b) Determine and recommend the amount of state aid, including building aid, to be distributed to cities and towns based upon the cost of an adequate education as set forth in subparagraph (a) and the method for distributing the state aid.

(c) Recommend changes in policy and procedure in the areas of educational improvement and accountability.

(d) Recommend interim and permanent processes to ensure adequate planning and implementation at the local and state level of special education and educationally related services, including planning for and development, on an interagency basis, of local school based options for pupils who have been placed in alternative or separate schools who could be placed in appropriate less restrictive options if available.

V. The commission shall be divided into the following policy subcommittees: adequacy and cost, educational improvement and accountability, and special education funding.

VI. The commission shall report its findings and recommendations no later than December 1, 2000. The report shall include, for each recommendation, proposed implementation schedules with timelines, specific steps, agencies and persons responsible, and resources needed. Where feasible, all plans, measures and initiatives shall be proposed as legislation or regulation so that they will have the force of law. All recommendations and plans shall be designed to be fully implemented no later than September 1, 2004.

VII. The department of justice, department of revenue administration, department of education, and department of health and human services shall provide the commission with assistance.

3 District Foundation Aid; Version Effective July 1, 1999; Per Weighted Pupil Amount Amended. Amend RSA 198:36, IV to read as follows:

IV. The foundation amount shall be [~~\$4,959~~] **\$7,200** per weighted pupil. ***The general court is constitutionally obligated to fund the cost of an adequate education and there are hereby appropriated, for the fiscal years ending June 30, 2001, June 30, 2002, June 30, 2003, and June 30, 2004, funds necessary to make the payments required in this section. The governor is authorized to draw a warrant for such sums out of any money in the treasury not otherwise appropriated. The total of 50 percent of all monies appropriated under this paragraph shall be used by cities and towns for the purpose of providing local property tax relief to resident taxpayers.***

4 New Paragraph; District Foundation Aid; Annual Increases Established. Amend RSA 198:36 by inserting after paragraph IV the following new paragraph:

IV-a. For all fiscal years following fiscal year 2001, the district foundation aid amount specified in this section shall be determined by adjusting the foundation aid amount for the year immediately preceding, by using the latest 12-month consumer price index for education, as determined by the United States Department of Labor, to increase the district foundation aid amount as required. In any fiscal year where the consumer price index for education would require a decrease in the district foundation aid amount, such foundation aid amount shall remain equal to the amount established in the immediately preceding year.

5 New Paragraph; District Foundation Aid; Calculation of Minimum School Tax Rate. Amend RSA 198:36 by inserting after paragraph V the following new paragraph:

VI. The local equalized school tax rate for every city and town in the state, prior to the calculation of any aid amounts received under this subdivision, shall be at least equal to the lowest local equalized school

tax rate established in any fiscal year, in any city or town. This paragraph shall apply to the establishment of the local equalized school tax rate in every city or town in the state whether or not such city or town applies for or receives aid under this subdivision. Nothing in this paragraph shall prevent a city or town from establishing a local equalized school tax rate that is greater than the lowest local equalized school tax rate amount established in any fiscal year.

6 Tax Equity and Efficiency Commission Established.

I. There is established a tax equity and efficiency commission to study issues relating to tax fairness and administrative implementation which may be appropriate for further legislative action.

II. The commission shall consist of the following members:

(a) Eight house members, including the chairperson or vice-chairperson of the finance committee, the chairperson or vice-chairperson of the education committee, and at least 3 members of the minority party, appointed by the speaker of the house.

(b) Five senators, including the chairperson or vice-chairperson of the finance committee, the chairperson or vice-chairperson of the ways and means committee, the chairperson or vice-chairperson of the education committee, and at least 2 members of the minority party, appointed by the senate president.

(c) The governor or designee.

(d) The commissioner of the department of revenue administration or designee.

(e) The commissioner of the department of education or designee.

(f) The state treasurer or designee.

(g) One representative appointed by the New Hampshire Municipal Association.

(h) One representative appointed by the New Hampshire School Administrators Association.

(i) One representative appointed by Claremont Lawsuit Coalition.

(j) One representative appointed by the New Hampshire Society of Certified Public Accountants.

(k) One public member, appointed by the governor.

III. The commission shall study issues arising under this act relating to tax fairness and administrative implementation which may be appropriate for further legislative action. As part of its study, the commission shall consider:

(a) The most appropriate means for evaluating the following types of property for taxation purposes:

(1) Utility property.

(2) Railroad property.

(3) Nuclear station property.

(b) The fairness of the renters credit under the income tax.

(c) The determination of the homestead exemption for owners of multi-unit dwellings or parcels with mixed uses.

(d) Whether a resident fiduciary responsible for payment of property taxes should qualify for the homestead exemption.

(e) The income tax treatment of pension payments received in lieu of social security payments or pension payments from pensions to which the taxpayer's contributions to the pension were previously taxed.

(f) The proper income tax treatment of military personnel on active duty residing out-of-state.

(g) The property tax treatment of non-conventional single owner or unusual residential situations such as nursing homes, dormitories, group homes, residential communities, condominiums, and cooperatives.

IV. The members of the commission shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first named senate member and shall be held within 30 days of the effective date of this section.

V. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before September 15, 1999 and on or before December 31, 1999.

7 Appropriation. The sum of \$150,000 for the fiscal year ending June 30, 2000, is hereby appropriated for the purposes of the commission established in RSA 193-E:4 as inserted by section 2 of this act. This sum shall not lapse until June 30, 2004. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

8 Repeal. The following are repealed:

I. 1998, 389:14, relative to district foundation aid.

II. Sections 1-7 of this act.

9 Effective Date.

I. Section 3 of this act shall take effect at 12:01 a.m. on July 1, 1999.

II. Section 8, paragraph II of this act shall take effect June 30, 2004.

III. The remainder of this act shall take effect upon its passage.

**1999-0566s**

### AMENDED ANALYSIS

This bill:

(1) Establishes an educational adequacy and education financing reform commission and makes an appropriation to the commission.

(2) Establishes a tax equity and efficiency commission to study issues related to tax fairness.

(3) Increases the district foundation aid amounts to \$7,200 per pupil for fiscal years 2001, 2002, 2003, and 2004, as adjusted by the consumer price index for education in these fiscal years, and provides that all district foundation aid disbursements are constitutionally mandated obligations of the state.

(4) Requires that, prior to the calculation of any alternative foundation aid amounts, the department of education establish in every city and town in the state, a local equalized school tax rate that is equal to the lowest local equalized school tax rate established in any city or town in a fiscal year. The bill permits local school districts to authorize additional spending in excess of this amount.

SENATOR F. KING: As I have been following the issue of how the Claremont lawsuit is going to be resolved, I am more and more convinced that we might need an interim plan to get us over the hump. I think, that as I have said before, that the amount of money that is being talked about for a plan that isn't complete is more than what we should be raising. I also feel obligated when I criticize something to offer an alternate and that is what I am going to do. We have talked about this some before, but I would like to refresh your memory because I have made a couple of changes. The opening paragraphs are the paragraphs that originally came out of SB 49. I have taken the two commissions that are established in the most recent legislation, including the changes that have been made. One commission being the adequate education finance reform commission. I call your attention on page two on the bottom. It tells the mission of the commission. The commission will determine and recommend the cost of an adequate education for all



students in New Hampshire by determining and calculating adjustments for individual school districts based on yearly inflation, cost of living variances, diseconomies of scale, transportation variability, demographics, including for school districts with a disproportionate number of students who are economically disadvantaged or have educational disabilities and such other factors as deemed relevant. Then it will determine and recommend the amount of state aid, including building aid, to be distributed to cities and towns based upon the cost of an adequate education as set forth in subparagraph eight. Now, as I have said before, that tells me that we are still looking for the answer to the question. We are about to spend up to one billion dollars on an unanswered question. The second commission, which appeared most recently, at least in my copy, is a commission called, "Tax equity and efficiency commission." This is established and there is established a tax equity and an efficiency commission to study issues relating to tax fairness and administrative implementation which may be appropriate for further legislative action. So I agree with this study process and I agree that a tremendous amount of work has already been done. Where I have the difficulty is that I think that the job isn't finished yet, and I think to raise one billion dollars is just inappropriate. Now the balance of the amendment is relatively simple, It is relatively short. Essentially what I am doing is funding the current foundation aid at \$7,200 per weighted pupil. This will go forward over a period of years. I have included an inflationary factor based on the educational CPI and don't ask me what that is, it is something that is available from the Department of Labor. I feel that if you are going to temporarily fund something and provide money, the school districts need to know as they go forward that they are going to get increased money on their increased costs. I know that when I was working in the health care industry in nursing homes there is a medical CPI and it ran about 6 percent because it is labor driven and I would anticipate that this is a labor driven CPI and probably would be somewhere in that neighborhood. The goal is to have this bill sunset when the work of the first commission and their findings are implemented, which is in 2004. Another thing that I have placed in the bill recently is when you run the numbers, you find that some districts do extremely well. Matter of fact some districts have a negative school tax rate and that obviously is not appropriate. So no school district, no town will have a tax rate...it is on page four, line 12. "No local equalized school tax rate for every city and town in the state." No rate will be lower than that established by the formulas that are used now without any foundation aid. The lowest rate right now, I think, is \$1.85. The other change that I have made in this, and we discussed it earlier, is that I have stated in here that 50 percent of the money that goes to the school districts must be used for property tax relief. Now I am a product of the local political system. I was a selectmen for 12 years, a school board member eight years and I have spent many years in county government. I am well aware of local control, but I have to tell you that when I talk to my constituents at the coffee shop and at the gas stations and around the area, that they don't trust us and they don't even trust their local government to necessarily lower taxes. They want property tax relief. I know that is the mission. Everyone has talked about that and local property tax relief is what we all hope will happen, but I have to tell you that my constituents would be a lot more comfortable if they knew, at least during this interim period, that they would be guaranteed at least some tax relief, so that is why I placed that in there. I also passed out the way

that I would propose to fund this amendment. RSA 198: 1 which is attached to this one page sheet is the statute that Senator Gordon pointed out to me, at least I wasn't aware of it. I guess that I read these statutes in the middle like I read the newspaper, because I have been dealing with RSA 198 but I have never looked at the first paragraph. RSA 198:1 produces \$222 million a 1-1/2 percent income tax based on the formula of Hager/Below/Fernald bill that would generate \$250 million. It would generate a little bit more than that so it would allow money for administration. The sweepstakes revenue is \$60 million. That would fund this interim financing plan. The other thing that I have passed out and before I am challenged on it, I tried to work from the information that had been passed out on previous amendments and I was targeting the five towns that have had the state in court and won the lawsuit. The way that I interpret it. I looked at those towns and then I looked at the various funding proposals and you can see them for yourself. During this interim period of time under this formula, using the current distribution formula, they do very well. What I would see happening if this were to pass, we would have to go with the plaintiffs to the court system and ask the court to allow the legislature to continue its work that is outlined in the commissions. The plaintiff towns would be receiving as much or more money that they would under any of the other plans that are being considered and, the commission could do its work and the future legislators could make the final decision and put the final plan in place. I believe that this is the way that you would deal with this if you were dealing with a business that had a critical issue of this, you would not be committing the money until you analyze and got the final answer to the problem. You wouldn't do it in your home budget and I don't think that we should be forced to do it in the legislature. It will obviously require the court to go along with this. If they don't, we will be no worse off than we are today, but I would anticipate with \$550 million essentially, I would have to think that they would consider that a good show in good faith. So thank you for hearing me, I think for the third time on this. I will answer any questions if you have any.

SENATOR FERNALD: Senator King, first of all, thank you for putting forth this proposal. I think that it is good for us to exchange ideas. My understanding of the Supreme Court decision is that we have an obligation as a state to fund an adequate education in all of the school districts of the state. I guess that my question is, does your plan do that? Is it constitutional?

SENATOR F. KING: It provides interim funding while the question of what an adequate education is, and how you pay for it is answered by the legislature, which you haven't done yet, in my opinion. If you have...I would feel much more comfortable with the legislation that has been introduced if you didn't have the commission in there. Then you might be able to convince me that you have done your work, but obviously you haven't done your work or you wouldn't have the commission. I just feel that you don't have confidence in the answers. In the hearings that I have attended, people continually talk about an interim plan, we need more statistics and we don't have the information and that is why I think that you have the commission. I think that we should just study the issue and work on it. I made it clear that I am not trying to fault the people that have worked so hard on this, they have spent countless hours on it and have done a good idea, we just are not there yet. It isn't constitutional.

SENATOR FERNALD: It isn't constitutional?

SENATOR F. KING: Right. As I said, it would require the plaintiffs and the legislature and the court to agree to allow to let this process go forward. I guess that as we reach the deadline that we are all facing, my anticipation is that the administrators of the school systems of this state probably would say that this isn't a bad deal, given the alternative that they are faced with in two weeks.

SENATOR FERNALD: It sounds like your plan works only if the plaintiffs and the courts go along. Have you made any effort to ask the plaintiffs whether they would accept this plan?

SENATOR F. KING: No I have not, Senator Fernald.

SENATOR FERNALD: You have not?

SENATOR F. KING: Have not.

SENATOR FERNALD: Thank you.

SENATOR BELOW: Senator King, was it your intent that the current content of HB 112 with the three cent cigarette tax increase and the tobacco prevention education program be eliminated because...

SENATOR F. KING: Yes, it would.

SENATOR BELOW: That is your intent?

SENATOR F. KING: Yes.

SENATOR BELOW: Okay, thank you.

SENATOR LARSEN: I rise to oppose this floor amendment and to ask you to consider that even the bills sponsor will recognize that this is an unconstitutional plan. It failed in the Senate Finance Committee. It will and should fail again today because what the court told us is that we must fund adequate education in every school district in this state. Years ago we might have been able to get by with pumping money into the Augenblick/Merrillblick Formulas. We are past that point and I believe that we are past the point of putting forth plans that we know are unconstitutional. It is our job to put forward a plan that provides a constitutionally adequate education for the children of this state and to do it by April 1. I have some numbers which are going to be handed out now which will show each of you in each of your school districts, we have determined what adequate is. This Senate body passed SB 49 to the Finance Committee and it continues to be the position of the majority of the Senate that an adequate level of education has to be somewhere in the vicinity of \$4,500 per child. We have gone through the steps that would make it obvious what is an adequate education. We have gone through determining those figures. The distribution that you received at your desk just now, indicates per district what your school districts will receive if we maintain an adequate level of funding for our school districts. If we are going to begin to pull that number down, each of your school districts will be under funded and each child will be denied that adequate level of education that the courts told us that we must provide. How we arrive at the adequate level is still under debate, but it should not be a debate today whether we are going to provide this adequate level of education to each of our school districts. I urge you to look at your district and consider what you are talking about when you reduce that per pupil level down to what is clearly below adequate. Five hundred and thirty two million averages out to about \$2,500 per pupil, but it doesn't go out per pupil under this plan, it goes out in a weighted ba-



sis and there will be towns that are supposed to be receiving adequate education who will receive none under this plan. It is unconstitutional and we should not waste our time on this and I urge your support of defeating this floor amendment today. Thank you.

SENATOR COHEN: Senator Larsen, you raised the question of constitutionality. The recognition that this level of funding does not come close, particularly to the level of adequacy that we realized that we have to obtain. I would like to know if you think that perhaps if we may be able to get to a level of adequacy as we have defined that perhaps that may be components of this, perhaps a skeleton, that this may be a skeleton for further work that we could do on this to reach the level of adequacy if that may be something that you may be able to agree with?

SENATOR COHEN: We have been pulling a bunch of skeletons out of the closet lately, and clearly we have looked at a few skeletons and we are going to look at a few more. There is always the opportunity to continue this discussion, but if you underfund education, if you do not follow the court's requirements to distribute it to each school district at an adequate level, then you will not see me supporting those kinds of skeletons.

SENATOR COHEN: Sorry for the use of terms there. I guess that I would inquire about the methodology that is the basis of Senator King's amendment here. If that may be something that we could build on that may be acceptable to you?

SENATOR LARSEN: You know, his methodology of having a Finance Reform Commission is fine. His methodology of having an adequacy commission is fine, and his methodology of providing inadequate education will never survive the court review and it certainly should not survive this Senate.

SENATOR COHEN: The components of RSA 198 the \$3.50 statewide property tax that is already on the books, the 1-1/2 percent income tax and the sweepstakes revenue, might that not be agreeable as starting places?

SENATOR LARSEN: You have to bring up the revenue levels to support this and when you start to bring up revenue levels people start to drop off this plan. When you start to bring up the numbers on an income tax you lose votes. It is clearly something which we will be debating for the rest of this day and I hope that we end today with a resolution of it.

SENATOR MCCARLEY: I, too, cannot support this floor amendment to some degree for the very reasons as Senator Larsen mentioned. We all have talked with some passion about things that have been in all of these bills and I do have some passion about the need for the adequacy level in terms of what it is going to do for school kids and property taxes across the state. I will say that one thing that I think that is valuable in this bill in terms of our discussions going forward today is that in addition to talking about an adequacy level, a base cost that we send all of our students, because of the formula used, as I understand it, Senator King, that particular distribution formula certainly waits for with reflections of per capita incomes; therefore, I think that this issue of concerns about at risk children and per capita incomes as a weight to be working off of as we move forward today. I think that it is very important and I certainly applaud Senator King for bringing us back to that over and over again. I think that we may be able to, as we go through the day today, talk more about guaranteeing that base cost for all of our communities; but looking at something with a distribution that speaks very much to that part of what Senator King's amendment is speaking to. So I cer-

tainly applaud the effort, and while I will not be able to support this floor amendment, I believe that we are certainly talking in terms of the distribution for our kids and for our school districts where the most need is, we are moving in that direction and I think that is very positive.

SENATOR JOHNSON: I would just like to go on record of respect for Senator King's tenacity in continuing to try to find a solution to our problem. I guess that is why he is the vice-chairman of Finance. I am comfortable with the adequacy number because I think that it is very close to the adequacy number that the commission came out with that I chaired and came out with a 5-4 majority vote. I am also pleased with the RSA 198 breathing new life into that, because I think that is something that Senator Gordon brought forward and I supported that. I guess the only negative that I see in Senator King's proposal is the income tax. For that reason, I probably cannot support this amendment. Thank you.

SENATOR GORDON: I just want to rise and commend Senator King in particular, because I think that he has been listening. When I talk to people, people have concerns and their primary concern as we have discussed before is that they want to see property tax relief and the one thing that he has addressed in this proposal is property tax relief. People want to be assured that if we are going to implement new taxation that they are going to get some benefit from it. I commend him because he has listened to people, because people want the money focused where it is going to do the most amounts of good. I think that it is important and what he has tried to do is do exactly that. I think that people want to proceed in moderation. The one concern that I have about identifying an adequacy number at \$4,500 or \$5,000 or more is that we in fact, and I think that we have to recognize going to inflate the cost of education. As I said before, I believe that we need to proceed cautiously and I believe that most of our constituents believe that we need to proceed cautiously. I might not be able to support this particular proposal, but the one thing that I can do, as I stand here, is say that I think that Senator King has been listening to his constituents. When Senator Fernald says, "Well have you checked with the plaintiffs yet?" well, I don't think that is who we should be checking with. I think that we should be checking with our constituents and see what they have to say. I think that Senator King has, and I commend him for putting the proposal in front of us today.

SENATOR DISNARD: Senator Gordon, I hear you praise everybody but a Democrat, but I would like to congratulate you for commending Senator King. I hope that you realize that Senator King has adequately, intelligently, researched and the average cost in his bill is \$7,200 per pupil. I think that when you recognize that, I feel great.

SENATOR GORDON: Senator Disnard, I don't think that this is a Republican thing or a Democratic thing and I am a little disturbed that anyone would try to make it a Republican or a Democratic thing. When you do a fine job on the floor and I respect you very much, Senator Disnard, I certainly will pay that respect to you and say that I think that you have done a fine job too, as I know that you do. But I think that anyone should have that type of respect.

SENATOR DISNARD: Thank you.

SENATOR FERNALD: I wanted to respond to a few points that Senator King brought up because I think that they are important, not only

in the context of this proposal, but any others that we may consider. One thing that he said was that he thinks that the adequacy number that the Senate has approved is too high. What we have to keep in mind is that we are looking for a system of state funding of a portion of school costs and it is to replace the local property tax. That is what the supreme court has told us we have to do, is replace a big portion of the local property tax because it is unconstitutional to the extent it is funding adequacy. So if we set a number that is higher than another number, then it means more property tax relief, it doesn't mean more spending, it means more property tax displaced. He also questions why we have a commission in other proposals and should we have a commission and is that an indication that we haven't defined adequacy? I went to a forum on this subject a couple of months ago and there was a question about defining adequacy and the person on the commission, I thought, made a very wise statement which is that education is not static and our society is not static. The court has said that we have an obligation to adequately educate all of our school children so that they can be functioning members of our society. As our society changes, our educational needs are going to change. Our definition of adequacy will change over time. I think that we should have a permanent adequacy commission to continually review what we are doing and what is absolutely essential and therefore, part of adequacy. Over time we may add things that we don't even consider, not even in the realm of possibility today could be absolutely necessary in the future. So I think that the idea of a commission is not an admission that we have failed at defining adequacy, it is just a recognition **TAPE CHANGE** My final point has to do with my question maybe having talked to the plaintiffs. We have a deadline and the reason that we have a deadline is the local school tax system will be unconstitutional on April 1, which means that if we do not find a replacement financing system for the schools the schools will close. We will have no public schools in the fall. So for us to vote for a plan that is admittedly unconstitutional, we still have the schools closed, we have still failed at our duty to find a constitutional system for the funding of schools for the fall. We should vote no on this amendment. Thank you.

SENATOR F. KING: Senator Fernald, since you obviously do not agree with my opinion of what an adequate cost of education is, I want to ask you a question. I think that I may have asked you the other day, but I would like to ask it again. I have a town in my district, Stratford, which arguably is the poorest town in the state of New Hampshire. One hundred and four thousand dollars worth of property value per student and per capita income is less than \$11,000. They are trying to maintain a K - 12 high school and their costs today are on average \$7,100. You are telling those people in Stratford that they should be able to provide an adequate education for \$4,900. Now how can you...do you really think that they are really wasting that other \$2,000 or do you think that your formula is flawed?

SENATOR FERNALD: Maybe my answer should not be another question, but...

SENATOR F. KING: No, I would like to have an answer that is why I asked it.

SENATOR FERNALD: The supreme court said that we have an obligation to fund adequacy and I think that there is a recognition of just about everybody that adequacy is not everything that we are doing now. There are certain things that we do now that are not part of an adequate edu-



cation. We have had some difficulty defining what is absolutely necessary and what is a frill, if you will or an extra. I had said before, there is no one right answer to what an adequate education is. For example, some people would consider interscholastic sports an extra, not part of adequacy and so those expenses could be put aside. I am sure that there are other people who think that it is absolutely part of adequacy. Some people would argue that extra curricular of all sorts are not part of adequacy, so they are spending \$7,100 per pupil in this town, I don't know what their school budget is and what they are spending it on and what they are not, but I think that you could go through that budget and say these items are part of the states obligation to educate children so that they can function in society and there are some items here that are not absolutely necessary, but extra. Maybe not a frill, but beyond what the states obligation is under the constitution. So I would put to you that \$7,100 does include some extras.

SENATOR F. KING: Oh yes it does. But I would put to you, that I believe that \$5,000 or just under that does not provide a constitutionally adequate education for the people in Stratford based on what I know about their situation and that is the question. That is why we need a study and that is why we haven't got an answer yet and that is why we should study the question and get the final answer and then fund it.

SENATOR BROWN: I would like to encourage my colleagues to give some serious and thoughtful consideration to Senator King's proposal from this standpoint. He is proposing something that is reasonable in the first few years of changing our tax structure in New Hampshire. We don't know the effects of drastic changes that we are talking about. One billion dollars or almost one billion dollars on the economics of the state of New Hampshire. There is wisdom in being gradual, in being thoughtful and deliberate in making these changes. Senator King knows that I have a proposal that is even less than what he is suggesting, but I want to say that I support his efforts at looking at a way to do this that is reasonable, that doesn't change our tax structure overnight and it doesn't damage our economy. Thank you.

SENATOR FERNALD: Senator Brown, are you saying that you support an income tax to support education?

SENATOR BROWN: No, I don't think that the income tax is in the bill, Senator Fernald. I think that he suggests that as a funding source, but I don't think that it is in the language of the bill. I will check that.

SENATOR BELOW: I, too, commend Senator King for putting this forward. I am tempted to vote for it because I think that there is a logic and reason to it, particularly because it was thought of as a one-year transition, but I think that there is the obvious problem that it is not constitutional and especially to carry out over a three-four year period. I don't think that it would get us to where we have to go. I am also concerned that it completely eliminates what the tobacco tax is, an additional vehicle. I think that I am going to have to vote against it, but I would say that as a one-year concept, it may have some merit and I think that we should continue talking about that.

SENATOR RUSSMAN: Since we are all commending Senator King, I certainly would want to join in that effort. Senator King certainly has a reputation of being one of the more pragmatic and practical Senators here. He spends a great deal more time here than I do and at the same time, I find myself trying to be as practical and pragmatic as I can, try-

ing to run a full-time law office at the same time. I generally do my business here and then I go back to work. We, today, all of us, are going to have to vote for things that we don't like at some point or another. I am concerned that after this is voted on, and I suspect that we know what is going to happen to it, I wouldn't pre-guess that, but I have a hunch that somebody will move to table the bill again and it will go on the table again and then we will recess. But the April 1 date, the problems are looming, they are already starting. I think that we all know that. I don't think that there is anyone in this room that wants to vote for taxes; that enjoys voting for tax increases in any fashion. I don't think that any of us like doing that, at the same time, I think that it is clear that we are going to have to do that and we are going to have to vote for things that we probably aren't going to like in the final analysis the way this thing has been going. Last night we thought that we were down to a vote of getting the majority and that overnight fell apart, of course. I am sure that we are going to continue to meet throughout the day to try to come up with something that we can get 13 people to agree on, not happily, because I don't think that anybody in this chamber is going to be happy with what we turn out for a bill here. It is something that we are going to stand back and say that we are proud of as a Senate position to go forward with. I think that what we come up with, hopefully, will fix the problem and something that we can send on to the House for their review, but I think that the time has come that all of us have got to reassess what we will support and what we won't support given that the bigger question is what if we don't? In other words, how far can you go in voting for what you may not want to vote for, given what the alternative is and the alternative is closing the schools and not having funding for our school system in the next year. I would urge my colleagues that after this vote, for all of us, to try as we possibly can, as difficult as it may be to work in a collegial fashion, Democrats and Republicans together, to make this thing go because I think that it is the only way that we are going to make it go.

SENATOR D'ALLESANDRO: I really echo the sentiments of Senator Russman, a) complimenting Senator King on coming up with something, but I mention to Senator King, and to all of us, that life is a series of problem-solving exercises and they never stop. A commission is in place because what we do is not perfection, it is something that needs to be improved on as we move forward. But facing the issue at hand, I think, is really the situation. We have youngsters that have to be educated. I might say not just youngsters, because in our schools we have adult education, and education is a life-long process now. So it is a process that must continue if you are to remain a viable society in this very, very complicated world; we must have education and that education has to be properly funded. My opposition is the number. The number is inadequate. If it is a transitional number it is still not adequate. There are times when, in this political process, compromises have to be made. I mean that is what good politics are all about. We are at a point where those items must be dealt with. We have an April 1 situation looming and we have an April 15 situation looming. In Manchester we have one thousand teachers. We have a number of administrators. We are the largest employer in the city of Manchester. We have 17,000 students in our system, so it has to be dealt with. We have to swallow hard because we have got to come up with a solution. We can applaud people for bringing forth ideas, but unless there is some synergy, all of that applause goes unrecognized and it falls by the wayside. The number isn't right and

we have to improve on that. The \$900 million number is a number that this Senate agreed upon in SB 49. To take Senator Squire's proposition with regard to the cigarette tax and discard it, I think it is just not a good thing. There is an item there that has merits and stands on its own and we should move forward with it. As a result, I will vote against the amendment. Thank you, Mr. President.

SENATOR F. KING: I just wanted to point out to my fellow colleagues that I am not being totally cheap, although I probably am being a little too conservative. I would point out that in Manchester you are now getting \$4.8 million in Foundation Aid and under my rather conservative approach you will get \$49 million, and Nashua gets \$296,000 now, and they would get \$27 million. I think that is a pretty good interim increase.

SENATOR D'ALLESANDRO: Senator King, would you believe that I applaud your generosity, but your generosity needs to be spread out. "Blessed are those who hunger and thirst for justice sakes for theirs is the kingdom of heaven." I appreciate that but let's carry it one step further and let's feed everybody. Thank you.

SENATOR HOLLINGWORTH: Just briefly, I, too, want to say thank you to Senator King for your efforts. I have heard the last few speakers appealing for us to come together and to agree upon something. I think that everyone in this room wants to do just that. I don't think that there is one Senator that has not listened to their constituents and they know the problems that exist and they are feeling the pressure extremely. I would like to say that about a year ago I wrote an article in one of the newspapers, and in it I said that I did not fear that we would not do something and that I was sure that we would do something, but what I feared is that it would do the wrong thing. I think that is true for all of us that we are trying to find the right thing to do. Because a crisis is looming, it should not make us take an action that is wrong. There is a poem by John Foster Dulles that goes like this, "Never fear to stand with the minority, for the minority that is right will one day be the majority."

**Recess.**

**Out of Recess.**

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Fernald.**

**Seconded by Senator Larsen.**

**The following Senators voted Yes: F. King, Hollingworth.**

**The following Senators voted No: Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Roberge, Fernald, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Wheeler, Klemm, Cohen.**

**Yeas: 2 - Nays: 21**

**Floor amendment failed.**

**Recess.**

**Out of Recess.**

**Senator Cohen moved to have HB 112, increasing the tobacco tax and imposing the tax on all types of tobacco products, laid on the table.**

**Adopted.**



**LAI D ON THE TABLE**

**HB 112**, increasing the tobacco tax and imposing the tax on all types of tobacco products.

**In recess.**

**Out of Recess.**

**TAKEN OFF THE TABLE**

Senator Russman moved to have **HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products, taken off the table.

**Adopted.**

**HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products.

Senator Brown offered a floor amendment.

Sen. Brown, Dist. 17

Sen. Krueger, Dist. 16

**1999-0557s**

**10/09**

**Floor Amendment to HB 112-FN-A**

Amend the title of the bill by replacing it with the following:

**AN ACT** establishing a local property tax education homestead allowance against school taxes on residential real estate, establishing a fund to reimburse municipalities for such allowances, and making an appropriation therefor.

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose. Recognizing the duty of the legislators and magistrates to cherish the interest of literature and the sciences, and all seminaries and public schools, as referred to in Art. 83 of Part 2 of the New Hampshire constitution, the general court hereby establishes an education homestead act. The purpose of this act is to provide support to local communities proportionate to their unique individual needs, evidenced by the varying property tax rates across the state. Beginning in 2000, the state will provide an education allowance for homeowners that will equal  $\frac{1}{2}$  of the education portion of their property tax bills, up to \$100,000 of homestead value of their primary residence. This allowance will be printed on the face of the individual property tax bills, and the state will pay to the taxing authority the total homestead allowance in that political subdivision, and the costs of administration.

2 New Subparagraph; State Accounts; Application of Receipts. Amend RSA 6:12, I by inserting after subparagraph (vvv) the following new subparagraph:

(www) Moneys deposited in the education homestead allowance fund established in RSA 76-A:2.

3 New Paragraph; Revenue Administration; Rulemaking Authority. Amend RSA 21-J:13 by inserting after paragraph XI the following new paragraph:

XII. The form and content for the application and statement of principal residency under RSA 76-A:1, II, and other matters necessary for the implementation of reimbursement to local tax collectors of towns, cities, and unorganized places of funds held in the education homestead allowance reimbursement fund under RSA 76-A.

4 New Paragraph; Revenue Administration; Municipal Services. Amend RSA 21-J:15 by inserting after paragraph IV the following new paragraph:

V. The administration of the education homestead allowance fund established in RSA 76-A:2, and the determination of the reimbursement due to the tax collectors of each town, city, or unorganized place from the fund pursuant to the provisions of RSA 76-A:3.

5 Taxes Collected by Tax Collector; Reference to Education Homestead Allowance Added. Amend RSA 76:10 to read as follows:

76:10 Selectmen's Lists and Warrant. A list of all property taxes by them assessed shall be made by the selectmen under their hands, with a warrant under their hands and seal. The list shall be directed to the collector of such town, requiring ~~him~~ **the collector** to collect the ~~same~~ **portion due from each listed property and to certify the education homestead allowances pursuant to RSA 76:10-b for reimbursement pursuant to RSA 76-A**, and to pay to the town treasurer such sums and at such times as may be therein prescribed. The selectmen shall assess such taxes to the owner as of April 1, or to the current owner, if known. The selectmen of a town or the board of assessors of a city may round off to the nearest dollar the total tax due on each parcel appearing on the list.

6 New Section; Certification of Education Homestead Allowances; Reimbursement of Costs. Amend RSA 76 by inserting after section 10-a the following new section:

76:10-b Certification of Education Homestead Allowances. The selectmen or assessors shall provide to the tax collector the total of the education homestead allowances granted in each town, city, or unorganized place. It shall be the duty of the tax collector to certify to the commissioner of revenue administration by October 1 of each year the total amount of the education homestead allowances granted and the actual cost to the town, city, or unorganized place of administering the provisions of RSA 76-A.

7 Tax Bills; Reference to Education Homestead Allowance Added. Amend RSA 76:11 to read as follows:

76:11 Delivery of List; Notice to Taxpayer; Other Bills. Such list shall be delivered to the collector within 30 days from the receipt of information by the selectmen from the commissioner of revenue administration of the rate percent of taxation as provided in RSA 41:15, unless for good cause the time is extended by the commissioner of revenue administration. The collector shall, within 30 days after the receipt of such list, send to every person taxed, a bill for ~~such~~ taxes **due** by first class mail, unless for good cause the time is extended by the commissioner of revenue administration. ~~Said~~ **The bill shall include any education homestead allowance granted under RSA 76-A. The** bill shall be mailed separately and not included with mailing of other town or city bills, unless the governing body of the town or city votes to mail other town or city bills or information directly related to municipal business along with the tax bill. Under no circumstances shall a city or town mail statements of position on matters of public policy along with the tax bill. Upon written request of a mortgagee or its representative, the tax collector of a city or town shall mail a duplicate copy of the property tax bill, as it was sent to the property taxpayer, to the party making such request. Other form of notification of tax owed, acceptable to the mortgagee and the tax collector, may be substituted for the duplicate tax bill. A separate written request, with specific property identification, shall be required for each duplicate copy or form. The governing body of a city or town may establish a reasonable fee to be charged for each duplicate copy or form. Resi-

dent tax bills may be included with property tax bills when the inclusion of such resident tax bills will not unduly delay the mailing of either the resident or property tax bills.

8 New Chapter; Education Homestead Act. Amend RSA by inserting after chapter 76 the following new chapter:

## CHAPTER 76-A

### EDUCATION HOMESTEAD ACT

#### 76-A:1 Education Homestead Allowance.

I. Every owner of residential real estate shall be entitled to an education homestead allowance on the amount of school property taxes assessed by the local tax collector.

II. No person shall be entitled to the education homestead allowance under this section unless the person has filed with the selectmen or assessors, by March 1 following the date of notice of tax under RSA 72:1-d, a permanent application therefor and a statement of principal residency, signed under penalty of perjury, on a form approved and provided by the commissioner of revenue administration, showing that the applicant is the true and lawful owner of the property on which the education homestead allowance is claimed and that the applicant was duly qualified upon April 1 of the year in which the education homestead allowance is first claimed. The form shall include such other information deemed necessary by the commissioner, pursuant to rules adopted under RSA 541-A.

III. The education homestead allowance, except where limited under the provisions of RSA 76-A:3, shall be 50 percent of the effective school tax rate in the town, city, or unorganized place, applied to the first \$100,000 of equalized assessed value.

IV. For purposes of this section, "residential real estate" means the real estate which the person liable for the payment of local school property taxes occupies as his or her principal place of abode together with any land or buildings appurtenant thereto and shall include manufactured housing if used for said purpose.

76-A:2 Fund Established. There is established an education homestead allowance fund for the purpose of reimbursing tax collectors of towns, cities, and unorganized places the total amount of education homestead allowance under RSA 76-A:1 and costs of administration. The fund shall be nonlapsing and continually appropriated for the purposes of this chapter. All moneys in this fund shall be used to provide payment to local tax collectors for the amount of the education homestead allowance against school taxes on property in towns, cities, or unorganized places and the costs of administration. The state treasurer shall deposit into the fund any sums appropriated from the general fund or received from any other source whatsoever for the purpose of the education homestead allowance fund.

76-A:3 Reimbursement from Fund. The commissioner of revenue administration shall review the amounts certified by local tax collectors pursuant to RSA 76:10-b and shall determine for each town, city, or unorganized place the total amount of education homestead allowances against local school property taxes, and shall by December 1 of each year reimburse the local tax collectors, from the fund established in RSA 76-A:2, the amount due each town, city, or unorganized place. Such reimbursement shall include the actual cost of administration by the local tax collectors of the provisions of this chapter in the town, city, or unorganized place. Provided however, that beginning in tax year 2001, for any town, city, or unorganized place the amount of the reimbursement



due under this section for any year shall be limited to an increase from the previous year of the lesser of 2 percent or the increase in the New England Consumer Price Index for the year as determined by the federal Bureau of Labor Statistics.

76-A:4 Obligation of State. The sums due to local tax collectors under the provisions of this chapter shall be the obligation of the state and not subject to collection and enforcement under RSA 80. No owner of residential real estate granted an education homestead allowance against local school taxes shall be held liable for the sums required to be paid from the education homestead allowance fund.

9 Information on Tax Bills. Amend RSA 76:11-a, I and II to read as follows:

I. The tax bill which is sent to every person taxed, as provided in RSA 76:11, shall show the rate for municipal, school and county taxes separately, the assessed valuation of all lands and buildings for which said person is being taxed, *the amount of any education homestead allowance*, and the right to apply in writing to the selectmen or assessors for an abatement of the tax assessed as provided under RSA 76:16. The department of revenue administration shall compute for each town and city the rates which are to appear on the tax bills and shall furnish the required information to the appropriate town or city.

II. The tax bill shall also contain a statement informing the taxpayer of the types of tax relief for which the taxpayer has the right to apply. The following statement shall be considered adequate:

"If you are elderly, disabled, blind, a veteran, or veteran's spouse, *are the owner of your principal place of residence*, or are unable to pay taxes due to poverty or other good cause, you may be eligible for a tax exemption, credit, abatement, *homestead allowance*, or deferral. For details and application information, contact (insert title of local assessing officials or office to which application should be made)."

This statement shall be prominent and legible, and may either be printed on the tax bill itself, or on a separate sheet of paper enclosed with the tax bill. A municipality may in its discretion choose to include more detailed information about the eligibility criteria for different forms of tax relief, provided, however, that the information in the above statement shall be considered a minimum.

10 Unorganized Places; Reference to Education Homestead Allowance Added. Amend RSA 198:16, III to read as follows:

III. The county commissioners shall, following receipt of [the] taxes collected under this section *and any sums received as education homestead allowance under RSA 76-A*, pay them to the county treasurer. From time to time, as deemed advisable by the department of education, it shall submit to the county commissioners bills for payment for the costs of education of the children from such unincorporated towns, unorganized places, and towns where by act of the legislature the school districts have been abolished and the education of the children made the responsibility of the state.

11 Appropriation; Education Homestead Allowance Reimbursement Fund. The sum of \$1 is appropriated to the education homestead allowance reimbursement fund established in RSA 76-A:2 from the general fund for the fiscal year ending June 30, 2000. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

12 Effective Date. This act shall take effect July 1, 1999.

1999-0557s

## AMENDED ANALYSIS

This bill establishes the education homestead allowance against the school taxes assessed on the principal place of residence of taxpayers. The education homestead allowance shall be  $\frac{1}{2}$  of the school tax rate applied to a certain amount of equalized assessed value of real estate. The amount of the allowance shall be paid by the state from a fund established for the purpose of reimbursing tax collectors.

SENATOR BROWN: Thank you for the opportunity to talk to you today about the Education Homestead Act. When the Claremont decision came down last year in December, I began thinking about an issue that is very important to me and that is property taxes in New Hampshire. I believe the reason that we had the Claremont lawsuit, and we have this problem today, is because property taxes are exclusive or almost an exclusive source of revenue for public education has gotten too high in New Hampshire. They have become confiscatory in some communities. For those of you who know me from when I was in the House, I sponsored bills to deal with property taxes. I began to look at this issue from the standpoint of how to address what got us where we are today, and that is the property taxes and the disparity between communities for property tax rates. About April of last year this plan began to come together. I looked at a number of ways to fund it, how to design it so that it would address that disparity and so forth and this is what the conclusion is. I would just like to take a moment to explain it to you. The Education Homestead Act looks at the language in our constitution that the court used to determine that it is the state's duty to provide an adequate education. The words "That it is the legislators and magistrates duty to cherish the interest of education..." and a whole bunch of other things. If you look at the first paragraph in this amendment, you will understand that what we do is we recognize the duty of legislators and magistrates to cherish the interest of education of literature in the sciences and all seminaries in all public schools as referred to as in article 83, II of our constitution. As a result of that, the general court hereby establishes an Education Homestead Act. The purpose of this act is to provide support to local communities proportionate to their unique, individual needs, evidenced by varying property tax rates across the state and it goes on to describe it. It is really a pretty simple concept and I have a chart to show you to help me explain to you. What will happen under the Education Homestead Act is that the state will pay one half of the local property tax on your home up to \$100,000 in value. Now that is not just an accident that I picked \$100,000 in value. If you look at some of the plaintiff communities and some of the poor communities in this state, they have a lower than state average value for their homes. The state average is \$114,000. Claremont is \$62,000. By the state paying one half of the education portion of your property taxes, those communities with the lowest property values get the most dollars from the state. It also is consistent with our constitution in that it treats everybody the same. We don't get into donor communities. Nobody is a donor under this plan. This is not a tax bill. There are no taxes in this plan. This is a mechanism for the state to fulfill its duty to help pay for the cost of an adequate education. So what you have on your tax bill is, that you have your three taxes that you now have. You have your local tax, your school tax and your county tax, but there will be a new line added to the tax bill that will be a reduction. It will be the state education allowance so that the taxpayer's net bill will reflect the state aid to education. I have

made this point several times that I think that by putting the dollars back into, at least on paper, back into the hands and control of the local taxpayers we have a better chance of not seeing rapid growth, but rather constrained growth, because the people in the communities will be making that decision more directly. I have discussed this bill with economists. I think that some of you are familiar with Lisa Shapario. She expressed to me what I had already come to believe, and that is that this problem that we have, which is the tax effort needed to raise adequate monies for adequate education, has a disparity across the state of approximately \$200 million. If you look at all of the plans being proposed, the \$800, the \$900 or whatever we are looking at for dollars, the new dollars needed that will help equalize the burden for the local communities will be around \$200 million. I don't think that we disagree too much on that. My proposal says, let's not take all of that money into a pot, but rather let's bring up those communities that need the help. I just have a couple of points to make and I won't be too long. There was an article done, "Ways to Skin the Property Tax Cat." I would suggest that there are a lot of ways to skin this cat that the court has given us; unfortunately, their narrow definition has made us feel a little bit boxed in. We can learn some lessons from what other states have done. This article talks about a number of other states. I would like to read this to you. "What lessons can be drawn from recent state property tax experiences? First, judging from the high priority given to it in the last few years, the property tax relief is still good politics. Taxpayers dislike the tax and want their burden reduced." When we talk about a statewide property tax, which this is not, this addresses it from the reverse, rather than punishing the so-called property rich, we help and supplement the property poor. There is one thing that I heard throughout the election when I went to talk to people and that is, "we don't like property taxes, please don't give us any more." The perception with a statewide property tax is that you now have a state part of your local property tax and people don't like that. "Taxpayers dislike this tax and want their burden reduced. Second, as with many issues before legislative bodies, sweeping reforms often fail where incremental changes can succeed." I mentioned that earlier because that is important. We need to be very careful that we don't jump in and make huge, huge changes to our tax structure very rapidly. We need to think about what the economic effects are going to be. A number of folks have asked the question, "Is it constitutional?" I will tell you that there are two constitutional lawyers, and I have an article from one of them, who have told me and others that it is absolutely constitutional. Now, it may not be the definition that the court wanted for our solution, but on its own merit, this bill is constitutional. I can share that with you. I would like to point out to you that the state of New Hampshire has been very lax in its supporting of public education. The House Finance Committee did a study that showed that average state shares of supporting public education have gone from 39.3 percent in 1963 to a high of 49.7 percent in 1987 to where they are now, and they are leveling off around 45 percent in 1993. We are at 8.5 percent. I said to all of you, that is not adequate. With the Education Homestead Act, which does not replace our present Foundation Aid, but is an additional amount, we will increase the state's portion to \$359 million, which brings us up to approximately 30 percent. Finally, I just have two more comments that I would like to make. Governor King from the state of Maine, gave a speech on taxes. Maine has been going through its own problems, or has gone through it. As you know a few years ago back in 1974 or 1975 they had a statewide property tax which caused them a tremendous amount of consternation. I would like to read you something that he



said. "Right across our border is one of the greatest experiments in low taxes in the western world. Just as we are near the top of the tax burden pile, that is the state of Maine, New Hampshire is at the bottom. Because our states are so similar, it is hard to escape the conclusion that their tax environment has something to do with the spectacular success that they have had in rebuilding their economy over the past five years." He goes on to say, "Recent economic history seems to indicate that maybe they're onto something with this low taxes stuff and it wouldn't hurt us to pay a little attention." I would urge you to consider the Education Homestead Act because I believe that it is the legislature's duty to define and to set the policy for funding adequate education. Lastly, I recently read an article entitled, "What is right with our schools?" Our public education system functions under a drumfire of criticism, some stemming from ignorance, but most from a sincere desire to improve. The critics include pressure groups with special axes to grind. "We have been asleep while the world has changed", "Classrooms are overcrowded", "Modern education is soft", "It doesn't provide discipline, preparation for life or good citizenship." The world in which we live has grown bewilderingly complexed, yet we expect that in the dozen years between the ages of 6 and 18 our schools will equip our children to live happily and work successfully in that world. Now why do I read through that in closing? Because I want you to understand what we are dealing with is not new and it won't be solved instantly. That article was written 46 years ago. I thank you very much.

**SENATOR TROMBLY:** Senator Brown, I just don't think **TAPE INAUDIBLE** if the state is going to pay half of the educational allowance, from where does the money come to pay the town?

**SENATOR BROWN:** It will cost the state approximately \$230 million. That is new money that we will have to find, okay? I think that we kind of agreed in our conversation just a few hours ago that we can all sort of agree to somewhere around \$200 million.

**SENATOR TROMBLY:** Thank you.

**SENATOR FERNALD:** Senator Brown, it is my understanding that it is a Supreme Court decision that the court told us, the legislature, it is our responsibility to define what an adequate education is, determine its cost, and then find the revenue to fund the cost of adequate education at the local level. So I guess that my question to you is does your bill define adequate education?

**SENATOR BROWN:** Absolutely not.

**SENATOR FERNALD:** Does your bill determine its cost?

**SENATOR BROWN:** No.

**SENATOR FERNALD:** Does your bill distribute any money to schools?

**SENATOR BROWN:** Absolutely. Would you like me to explain why I answered you that way?

**SENATOR FERNALD:** As I understood it, it was money going back to the people. Does your bill provide for any money payable to school districts?

**SENATOR BROWN:** I guess that I would ask you in contrast to your bill which you say gives property tax relief and trust the local people to make the decision. I am saying, yes, I do. In fact, I will put the money right on their tax bill. The money goes to the town, but it will be on their tax bills so that they can go to their school meetings and feel some control. Right now, if the money goes into the general funding as you know, if

you go to your school budgets, that is state dollars and then all of a sudden you don't feel that you have control over it, it is a perception thing. So, by putting it on the tax bill...even though the dollars are not handed over to them, they are handed over to the town, people retain some sense of control.

SENATOR FERNALD: But my question was does your bill provide for any money to be paid to schools?

SENATOR BROWN: I leave that to the local people.

SENATOR KRUEGER: I rise in support of this amendment known as the Homestead Act. Actually, I would like to begin a little out of order in referring back to Senator Fernald's question. I want to quote from one of the constitutional lawyers who says, "The fundamental assumption underlying statewide property tax and combination income tax—statewide property tax, as well as the charge by proponents of these tax plans, that the Education Homestead Act is unconstitutional, is that the state constitutionally required to fund the entire cost of an adequate education. That assumption..." and I agree with this attorney, "is incorrect." What our Supreme Court actually said in Claremont was that our constitution imposes a duty on the state to provide a constitutionally adequate education. The distinction is not semantical, because the state obligation is to provide a constitutionally adequate education rather than simply an adequate education. The question really is whether the state of New Hampshire is providing sufficient funding for education, that being a constitutional question and not a political question. There are many of us that stand in this Senate that say to you, Mr. President, that the question is one of policy and that is our determination. To proceed with my arguments relative to the Homestead Act, I want to begin...and I will also make this very brief. I want to begin by quoting to you from an address given by the governor to the general court. "I have no wish to alarm you, but I have no other course open to me than to point out that we in New Hampshire have now arrived at a juncture where a halt must positively be made in the upward march of tax rates and, just as positively, steps must be taken to relieve the intolerable load which rests on real property." This happened to have been an address given by the governor actually putting forth the tobacco tax which was supposed to have helped relieve property taxes in this state, Tuesday, May 23, 1939. "I maintain that the problem has always been here and I am not certain that the problem won't always be here in the future." I believe that we do live...and we should be proud to say that we live in a state where education gets very high grades. We live in a state where the tax burden is very low. I would also concede that property taxes are unfair and certainly that issue has been pointed out by all groups, both in this room and out. I would also like to tell you that there are certainly groups with your best at interest. I am the first person to admit that, and I am the first person to admit to you, that when you hear statements from high tech council, and we look to the future to these people to help us fund everyone of these plans that are here, red flags should go up when they say that the economy is booming, be careful how you change the state of New Hampshire because generational economics will demand that there will be a fallout. I do believe that those of us in this room should care, because that too will impact the poor, and that too will impact the quality of education in this state. I heard that the poor are getting poorer. We have lower welfare, but the poor pay high property taxes. Everyone pays high property tax. What I love about this Homestead Act

is that everyone gets a proportional amount of property tax relief. High technology council says that a wholesale reinvention of New Hampshire's tax structure is not warranted, nor is it wise. I wish briefly to quote to you incentive affects of property taxes on local government from Harvard University, 1996 by Professor Edward Glaser, says, "Incentives are stronger when schools are financed by local property taxes than when they are financed by state government. One would expect in New Hampshire, financing schools with local property taxes would provide stronger incentives than in other states." So we hear reoccurring themes here. We hear again from the American Legislative Exchange Council, who, in a book, a very open disclosure about taxes and their economic impacts in the United States happens to mention and uses New Hampshire...heaven knows if we will even make it into this book again. "The experience of New Hampshire is particularly insightful for states attempting to promote economic growth." Isn't economic growth what basically helps all of us in this state? "New Hampshire has successfully attracted business investments and jobs, not only because of lower tax burdens, but because it relies on property taxes, rather than sales or income taxes. Most government activity in New Hampshire occurs at the local level, not state level, and is financed by local property taxes. When taxes and spending occur at the local level, there is greater incentive for residents to monitor government programs; in greater incentives for governments to provide services efficiencies." That all being said, why not support the Homestead Act? I think that a wonderful statement by Gene Vanlone given in testimony before this very Finance and Ways and Means Committee that addressed was that the Homestead Act is not a tax. It is a spending measure. By paying one-half of the portion of every citizen's municipal school tax bill, attributable to the first \$100,000 of assessment upon its primary resident, it does not prescribe how the state will raise the money. This means the money will come out of the state's general revenues, which are generated from many sources, including state taxes. Accordingly, the Homestead Act itself is not a tax. It can't be constitutional or unconstitutional. The constitutionality of the Homestead Act is determined by reference to the principles related to the legality of government spending programs. So the Supreme Court has said on numerous occasions that the wisdom and the expediency of public works and welfare programs are not to be second-guessed by the judiciary. I cite the Concord Railroad in 1845 eminent domain. If in fact all of these towns that are listed with a grand total of \$231 million, funded through general revenues, provides money to the plaintiff towns and all of the towns. And in fact, if Claremont, Allentown, Franklin, Lisbon and Pittsfield receive not much less under a non-bureaucratic plan than the others, why not would we then at least look at the Homestead Act. Look at the Homestead Act as a way that the state funds education because that new money that is promised by the state, relieves property taxes, puts \$230 million and stimulates the economy. Lisa Shapario said that it stimulates the economy. Why not look at this as a solution? Thank you very much, Mr. President.

SENATOR TROMBLY: Senator Krueger, if the Supreme Court said that the reliance on the property tax as it currently exists in the state is unconstitutional, and this plan gives back half of the money raised by the property tax back to the property owner, doesn't that make your plan half as unconstitutional as the present plan?

SENATOR KRUEGER: No, but thank you. It was probably my lack of clarity that led you to that incorrect conclusion.

SENATOR TROMBLY: Probably my lack of understanding more than your lack of clarity, I am sure.



SENATOR KRUEGER: I doubt it. Actually, this plan, the taxpayer sees as demonstrated by the good Senator, a minus line. So I send my \$1100 which would be about the average in the state, to the town. The town clerk adds up all of those \$1100 and bills the state for that amount. Let's take Claremont. So in Claremont, the amount of money that would be billed to the state of New Hampshire would be \$302,092,851. That bill would be a simple procedure to the state. The state would then send a check to Claremont for that amount. What happens when you lower people's property taxes, and I didn't go through all of the testimonies that we had in deference to time. But if you look into this bill what you will find demonstrated by any economist who has looked at it, you will see as we all know...when property taxes are high, values are low. When you start reducing people's property taxes, the value of the property does go up. You see what is known as natural equalization. It is not instantaneous, but I don't find that in anyone's plan, but it definitely causes equalization; therefore, the constitutionality of that aspect that you raised has certainly been addressed.

SENATOR TROMBLY: Senator Krueger, if the problem with Claremont is that in the property poor towns that they have to tax higher and the property rich towns don't have to tax as much. The property poor town residents are still going to have to tax more to reach the 50 percent **TAPE CHANGE** residents. All that you are doing is, you are not equalizing or you are not lessening the burden of having to raise those taxes, you are simply saying that you will tax the exact same way but we will give you half back, thus, giving the same proportional tax break to people in towns already receiving the benefits as opposed to the plaintiff towns and the towns similarly situated. Do you see what I am saying?

SENATOR KRUEGER: I see now where you are coming from. I am going to answer that, but then I am also going to let Senator Brown answer. I just want to say that if you take again what was done to Claremont, we brought it up. It was a town where the average house is valued at \$62,000 and when you implement the Homestead Act, you will find that relieves a huge part of their tax bill whereas in a town, let's take Bedford, where it is not unusual to have houses valued far greater than \$100,000. Remember that this only reduces one half of the educational allowance up to \$100,000. People are responsible after that \$100,000 to \$200,000 and up from there. You will find that. I just want Senator Brown to finish the answer to that.

SENATOR BROWN: There are a couple of perspectives that I would like you to think about. Number one, under the Homestead Act, if you would look at the net dollars that the taxpayers are paying as opposed to a statewide property tax, the reduction is greater for those communities under this bill than with a statewide property tax, pure and simple statewide property tax. Secondly, as I think that I tried to say, but I probably didn't explain it well enough, we have taken as a policy position, the legislature, the definition of the duty to cherish, to mean funding for adequate education. Now, the state interest in education is an interest, but there are other entities with an interest and this may be something that we would have to debate with the court. I don't deny that in any of these plans that we may have to debate something with the court, but what I am saying is that the state's interest is that part that is constitutionally adequate part. So we define that and we say that a proportionate funding fulfills that based on the needs of the community. In so doing, we have taken the policy part to ourselves, and if the court challenges that, then we have to make that argument.

SENATOR TROMBLY: Mr. President, I have just observed that it is no fun debating with the court because they always get the last word.

SENATOR F. KING: Senator Krueger, I think that I heard you say in your testimony that the money to fund this is going to be taken out of the general fund revenues that the state already has?

SENATOR KRUEGER: Senator King, I would hope that there would be an increase in some of the taxes that have already been identified, that is why I brought that up at an earlier meeting today. That in fact, in order to fund this, this would not be a dip into the budget as it currently stands, but would in fact come from a various number of services, none of which would be a broad based tax. But yes, when we talk about compromise...

SENATOR F. KING: Would there be new taxes?

SENATOR KRUEGER: No, there would be none.

SENATOR F. KING: So they are going to reach into existing sources of revenue and take some money out of existing sources?

SENATOR KRUEGER: We would propose that we would hope that there would be the increase in the taxes that seems to be the constant flow through everyone's plan here. In other words, of course there would have to be some small increases in the business tax, of course you would have to look at tobacco. You know, we all stand here and admirably so, fight for our philosophical positions, but for a conservative such as myself, to say that I am willing to raise certain taxes, existing taxes to fund this proposal and trade off far reaching new taxes, I think is the answer.

SENATOR FRASER: I think that Senator Fred King has asked part of my question, but just to be sure I understand Senator Brown, the amount of money that would be necessary to fund the Homestead Act as you mentioned, the combination of Foundation Aid and the **TAPE INAUDIBLE** would be a total of \$359,251,000 is that correct?

SENATOR BROWN: That is correct. The Foundation Aid is already there and so the new portion, the new monies would be \$231 million.

SENATOR FRASER: That equates to 50 percent of the tax bill of every tax property owner up to \$100,000?

SENATOR BROWN: On your private residence, up to \$100,000. That is where these numbers come from.

SENATOR FRASER: This does not apply to commercial property?

SENATOR BROWN: No.

SENATOR JOHNSON: Senator Krueger, would you believe in your defense of economic development that in the last election in the state of Maine that I observed all of the gubernatorial candidates talking about the situation over there and what they would do, and both parties agreed that because of their high tax burden that they would never come out of their recession. Would you believe that?

SENATOR KRUEGER: I would, Senator Johnson. I think the reason that groups such as NFIB and the Granite State Taxpayers applaud this particular plan is because they look forward to further economic growth in the state of New Hampshire.

SENATOR MCCARLEY: Senator Brown, I apologize for getting in here towards the end of this debate. I do have a question that has already been stated, but Senator Fraser raised it, I believe. As I understand this, businesses will see no change in what they currently pay for schools?

SENATOR BROWN: Correct.

SENATOR MCCARLEY: So if they are currently paying at \$23 to \$25 per thousand which they have been in two of the communities that I represent, they will continue to be paying at that rate?

SENATOR BROWN: That is true. There is one thing that I would like you to try and understand about lowering tax rates. When you lower significantly, property tax rates, the tax base expands because values increase, people feel empowered. They improve their homes, they buy bigger homes. So when your tax base increases, the rates go down on businesses and on other entities. Slow though, very gradual.

SENATOR MCCARLEY: Thank you.

SENATOR BELOW: I do want to rise to commend Senators Brown and Krueger. I think that it is a very innovative idea. I think that it would have a lot of merit if we weren't sitting here with the Claremont Decision. But in light of the Claremont Decision I cannot support it. It is simple. There are two simple statements. From Claremont II the court said to the extent that the property taxes used in the future to fund the provision of an adequate education, the tax must be administered in a manner that is equal in valuation and uniform in rate throughout the state. In case anyone had any doubts about what they meant, in their opinion of June 23, 1998 on the ABC Plan, they said again to the extent that the property tax is used to raise revenue to satisfy the state's obligation to provide an adequate education, that it must be proportional across the state. This amendment simply does not result in property taxes that are proportional and uniform between towns for funding an adequate education. It does nothing, particularly, for non-homeowners, for the commercial businesses and other property taxpayers, they would see no change from the status quo except perhaps the benefit over time of some increased property values in the residential sector.

SENATOR BROWN: Senator Below, I wanted to commend you for that statement. I would like to make one point if I may. That is, that I agree with you about the narrow definition of the court left us in this little box; however, as a policymaker who looks at the total welfare of our state, the economic welfare, educational welfare, individuals and so forth, that I think that we have an obligation, that even though the court said that, to say that it is the best policy of our state, or at least we may determine that it is, as a body, to do something that is constructive that doesn't destruct our economy or cause problems. So that is why I did that.

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Brown.**

**The following Senators voted Yes: Johnson, Roberge, Francoeur, Krueger, Brown, Klemm.**

**The following Senators voted No: F. King, Gordon, Fraser, Below, McCarley, Trombly, Disnard, Fernald, Squires, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler, Hollingworth, Cohen.**

**Yeas: 6 - Nays: 17**

**Floor amendment failed.**

Senator Gordon offered a floor amendment.



1999-0563s

09/10

**Floor Amendment to HB 112-FN-LOCAL**

Amend the title of the bill by replacing it with the following:

**AN ACT** establishing state funding of an adequate education by imposing a sales tax, extending the meals and rooms tax to rental cars, and dedicating certain state revenues to education; and establishing an adequate education and education financing reform commission and making an appropriation therefor.

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; Sales and Use Tax. Amend RSA by inserting after chapter 77-E the following new chapter:

**CHAPTER 77-F****SALES AND USE TAX**

77-F:1 Definitions. In this chapter:

I. "Casual sale" means an isolated or occasional sale of an item of tangible personal property by a person who is not regularly engaged in the business of making sales of that general type of property at retail where the property was obtained by the person making the sale, through purchase or otherwise, for his or her own use. Aircraft, snowmobiles, motorboats, and vessels, are hereby specifically excluded from the definition of casual sale.

II. "Commissioner" means the commissioner of the department of revenue administration.

III. "In this state" or "in the state" means within the exterior limits of the state of New Hampshire and includes all territory within these limits owned by or ceded to the United States of America.

IV. "Person" means an individual, partnership, society, association, joint stock company, corporation, public corporation or public authority, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise and any combination of the foregoing.

V. "Persons required to collect tax" or "persons required to collect any tax imposed by this chapter" means and includes every vendor of taxable tangible personal property or services. These terms shall also include any officer or employee of a corporation or of a dissolved corporation who as that officer or employee is under a duty to act for the corporation in complying with any requirement of this chapter and any member of a partnership.

VI. "Property and services the use of which is subject to tax" means and includes all property sold to a person within the state, whether or not the sale is made within the state, the use of which property is subject to tax under RSA 77-F:4 or will become subject to tax when such property is received by or comes into the possession or control of such person within the state.

VII. "Purchaser" means a person who purchases property or who receives services taxable under this chapter.

VIII. "Receipt" means the amount of the sales price of any property taxable under this chapter valued in money, whether received as money or otherwise, without any deduction for expenses or early payment discount, but excluding any amount for which credit is allowed by the vendor to the purchaser, and excluding any allowance in cash or by credit

made upon the return of merchandise pursuant to warranty or the price of property returned by customers when the full price thereof is refunded either in cash or by credit, and excluding the price received for labor or services used in installing or applying to repairing the property sold, if separately charged or stated, and the cost of transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser provided those charges are separately stated and provided the transportation occurs by means of common carrier, contract carrier or the United States mails.

IX. "Retail sale" or "sold at retail" means the sale of tangible personal property to any person for any purpose, other than for resale, except resale as a casual sale. Sales of tangible personal property to all contractors, subcontractors or repairpersons of materials and supplies for use by them in erecting structures for others, or building on, or otherwise improving, altering, or repairing real property of others are deemed to be retail sales.

X. "Sales, selling or purchase" means any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor; except professional, insurance, personal service transactions, advertising services and computer and data processing services where tangible personal property is transferred as part of such service transaction so long as no separate charge is made for the tangible personal property and so long as the value of the tangible personal property transferred is essentially an inconsequential element in relation to the value of the service transaction. The provisions of this paragraph shall be retroactive if to the benefit of the taxpayer.

XI. "Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses and shall include fuel, but shall not include rights and credits, insurance policies, bills of exchange, stocks and bonds, and similar evidences of indebtedness or ownership. Tangible personal property shall also include electricity unless RSA 83-E, the electricity consumption tax, is in effect.

XII. "Use" means the exercise of any right or power over tangible personal property by the purchaser thereof and includes, but is not limited to, the receiving, storage or any keeping or retention for any length of time, withdrawal from storage, any installation, any affixation to real or personal property, or any consumption of that property.

XIII. "Vendor" means and includes:

(a) A person making sales of tangible personal property or services, the receipts from which are taxed by this chapter;

(b) A person maintaining a place of business in the state and making sales, whether at that place or business or elsewhere, to persons within the state of tangible personal property or services, the use of which is taxed by this chapter;

(c) A person who solicits business either by employees, independent contractors, agents or other representatives or by distribution of catalogs or other advertising matter and by reason thereof makes sales to persons within the state of tangible personal property or services, the use of which is taxed by this chapter;

(d) Any other person making sales to persons within the state of tangible personal property or services, the use of which is taxed by this chapter, who may be authorized by the commissioner to collect the tax imposed by this chapter; and

(e) The state of New Hampshire or any of its agencies, instrumentalities, public authorities, public corporations, including a public corporation created pursuant to agreement or compact with another state, or political subdivision when that entity sells services or property of a kind ordinarily sold by private persons.

77-F:2 Imposition of Sales Tax. Except as otherwise provided in this chapter, there shall be paid a tax of 4 percent upon the receipts from the sale of tangible personal property purchased at retail in this state.

77-F:3 Tax Bracket Schedule.

I. For the purpose of adding and collecting the tax imposed by RSA 77-F:2, or an amount equal as nearly as possible or practicable to the average equivalent thereof, to be reimbursed to the vendor by the purchaser, the following formula shall be in force and effect as follows:

<u>Amount of Sale</u>	<u>Amount of Tax</u>
0.01 - 0.50	.02
0.51 - 1.00	.04

II. In addition to a tax of .04 on each full dollar, a tax shall be collected on each part of a dollar in excess of a full dollar in accordance with the following formula:

0.01 - 0.50	.02
0.51 - 1.00	.04

III. When several taxable articles are purchased together at the same time, the tax shall be computed on the total amount of the purchase of several taxable items.

77-F:4 Imposition of Compensating Use Tax. Unless property has already been or will be subject to the purchase tax under RSA 77-F:2, there is imposed on every person a use tax at the rate of 4 percent for the use within this state, except as otherwise exempted under this chapter:

I. Of any tangible personal property purchased at retail; and

II. Of any tangible personal property manufactured, processed or assembled by the user, if items of the same kind of tangible personal property are offered for sale by the user in the regular course of business, but the mere storage, keeping, retention or withdrawal from storage of tangible personal property or the use for demonstrational or instructional purposes of tangible personal property by the person who manufactured, processed or assembled such property shall not be deemed a taxable use by such person.

77-F:5 Administration; Rulemaking. In addition to other powers granted to the commissioner in this chapter and in RSA 21-J, the commissioner shall:

I. Collect the taxes, interest, additions to tax, and penalties imposed under this chapter and RSA 21-J.

II. Adopt rules, pursuant to RSA 541-A, relative to:

(a) The administration of the sales and use tax.

(b) The recovery of any tax, interest on tax, additions to tax, or the penalties imposed by RSA 77-F or RSA 21-J.

(c) The form of any returns, certificates and documents and the data which they must contain for the correct determination on computation of receipts and the tax assessed thereon.

III. Require any person required to collect taxes to keep detailed records of all receipts, received, charged or accrued, including those claimed to be nontaxable, and also of the nature, type, value, and amount of all purchases, sales, and other facts relevant in determining the amount of tax due and to furnish that information upon request to the commissioner.



IV. Publish and maintain, as the commissioner deems necessary, lists of specific items of tangible personal property which are found to be exempt from tax under RSA 77-F:2.

77-F:6 Liability for Tax. Every person required to collect any tax imposed by this chapter shall be personally liable for the tax imposed, collected or required to be collected, under this chapter. That person shall have the same rights in collecting the tax from the purchaser or regarding nonpayment of the tax by the purchaser as if the tax were a part of the purchase price of the property, and payable at the same time; provided, however, that the commissioner shall be joined as a party in any action or proceeding brought to collect the tax.

77-F:7 Principal and Agent; Joint Liability. When, in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to treat any salesperson, representative, peddler, or canvasser as the agent of the vendor, distributor, supervisor, or employer under whom the person operates or from whom the person obtains tangible personal property sold by the person or for whom the person solicits business, the commissioner may, in the commissioner's discretion, treat such agent as the vendor jointly responsible with the principal, distributor, supervisor, or employer for the collection and payment of the tax.

77-F:8 Payment and Return by Purchaser.

I. Where any purchaser has failed to pay a tax imposed by this chapter to the person required to collect the same, then in addition to all other rights, obligations and remedies provided, the tax shall be payable by the purchaser directly to the commissioner and it shall be the duty of the purchaser to file a return with the commissioner and to pay the tax to the commissioner within 20 days of the date the tax was required to be paid.

II. The commissioner may, whenever the commissioner deems it necessary for the proper enforcement of this chapter, provide by rule that purchasers shall file returns and pay directly to the commissioner any tax herein imposed, at such times as returns are required to be filed and paid by persons required to collect the tax.

77-F:9 Transfers not in Course of Business; Notice; Lien.

I. Whenever a person required to collect the tax shall make a sale, transfer, or assignment in bulk of any part or the whole of such person's business assets, otherwise than in the ordinary course of business, the purchaser, transferee or assignee shall, at least 10 days before taking possession of the subject of the sale, transfer or assignment, or payment therefor, notify the commissioner by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferer or assignor, has represented, to, or informed the purchaser, transferee or assignee that any tax is owed pursuant to this chapter, and whether or not the purchaser, transferee, or assignee has knowledge that the taxes are owing, and whether any taxes are in fact owing.

II. Whenever the purchaser, transferee or assignee shall fail to give notice to the commissioner as required by paragraph I, or whenever the commissioner shall inform the purchaser, transferee or assignee that a possible claim for the tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferer or assignor shall be subject to first priority right and lien for any taxes theretofore or thereafter determined to be due from the seller, transferer or assignor to the state, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferer or assignor any sums of money, property or choses in action to the extent of the

amount of the state's claim. For failure to comply with this section the purchaser, transferee or assignee shall be personally liable for the payment to the state of any taxes theretofore or thereafter determined to be due to the state from the seller, transferer or assignor, and the liability may be assessed and enforced in the same manner as the liability for tax under this chapter.

#### 77-F:10 Registration.

I. On or before September 1, 1999, or in the case of persons commencing business or opening new places of business after that date, within 3 days after the commencement or opening, every person required to collect any tax imposed by this chapter and every person purchasing tangible personal property for resale shall file with the commissioner a certificate of registration in a form prescribed by the commissioner. The commissioner shall issue, without charge, to each registrant a certificate of authority empowering the registrant to collect the tax. Each certificate shall state the place of business to which it is applicable. The certificate of authority shall be prominently displayed in the place of business of the registrant. A registrant who has no regular place of doing business shall attach the certificate to the registrant's cart, stand, truck or other merchandising device, or carry it on the registrant's person. The certificate shall be nonassignable and nontransferable and shall be surrendered to the commissioner immediately upon the registrant's ceasing to do business at the place named.

II. Any person who is not otherwise required to collect any tax imposed by this chapter and who makes sales to persons within the state of tangible personal property or services, the use of which is subject to tax under this chapter, may, if such person so elects, file a certificate of registration with the commissioner who may, in the commissioner's discretion and subject to such conditions as the commissioner may impose, issue to such person a certificate of authority to collect the compensating use tax imposed by this chapter.

#### 77-F:11 Restrictions on Advertising.

I. No person required to collect any tax imposed by this chapter shall advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the tax is not considered as an element in the price payable by the customer, or that such person will pay the tax, that the tax will not be separately charged and stated to the customer, or that the tax will be refunded to the customer.

II. Upon written application duly made and proof duly presented to the satisfaction of the commissioner showing that in the vendor's particular business it would be impractical for such vendor to separately charge the tax to the customer, the commissioner may waive the application of the requirement herein as to such vendor.

III. Whenever reference is made in placards or advertisements or in any other publications to any tax imposed by this chapter, the reference shall be in substantially the following form: "sales and use tax"; except that in any bill, receipt, statement or other evidence or memorandum of sale issued or employed by a person required to collect tax, if the tax is required to be stated separately thereon as provided in RSA 77-F:23, the word "tax" shall suffice.

77-F:12 Recordkeeping. Every person required to collect any tax imposed by this chapter shall keep records of every sale and of all amounts paid or charged or due thereon and of the tax payable thereon, in such form as the commissioner shall require. These records shall include a true copy of each sales slip, invoice, receipt, statement or memorandum upon which RSA 77-F:23 requires that the tax be stated separately. The

records shall be available for inspection and examination at any time upon demand by the commissioner or the commissioner's duly authorized agent or employee and shall be preserved for a period of 3 years, except that the commissioner may consent to their destruction within that period or may require that they be kept longer.

#### Exemptions

77-F:13 Sales not Covered. Receipts from the following shall be exempt from the tax on retail purchases imposed under RSA 77-F:2 and the use tax imposed under RSA 77-F:4:

I. Sales not within the taxing power of this state under the Constitution of the United States.

II. All health care items, including, but not limited to, purchases of medicines and drugs sold pursuant to a doctor's prescription for human use, oxygen for medical purposes, blood, blood plasma, artificial components of the human body, prosthetic devices, medicinal appliances, corrective appliances, corrective optical devices, dentures, hearing aids, seeing eye dogs, crutches, wheelchairs, hospital type beds, medical and dental devices and instruments, medical and dental equipment (including component parts thereof) and supplies used in treatment intended to alleviate human suffering or to correct, in whole or in part, human physical disabilities.

III. Casual sales.

IV. Purchases of all alcoholic beverages.

V. Purchases of motor fuels; taxed or exempted under RSA 260, provided, however, that jet fuel shall be taxed under this chapter.

VI. Purchases of tobacco products taxed or exempted under RSA 78.

VII. Rents for rooms, taxed under RSA 78-A and the transactions exempted therefrom.

VIII. Purchases of meals, taxed or exempted under RSA 78-A.

IX. Purchases of food, food stamps, purchases made with food stamps, food products and beverages sold for human consumption off the premises where sold.

X. Purchases of equipment, supplies, and building materials made directly to volunteer fire departments, volunteer ambulance companies, or volunteer rescue squads for official use by the volunteer organizations.

XI. Funeral charges, including, but not limited to, sales of tangible personal property such as caskets, vaults, boxes, clothing, crematory urns, and other such funeral furnishings as are necessary incidents of the funeral, and other items sold as an accommodation rather than as an integral part of the funeral service or preparation therefor.

XII. Tangible personal property purchased for use or consumption directly and exclusively, except for isolated or occasional uses, in commercial, industrial or agricultural research or development in the experimental or laboratory sense. It shall be rebuttably presumed that uses are not isolated or occasional if they total more than 4 percent of the time the machinery or equipment is operated. Such research or development shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising promotions, or research in connection with literary, historical or similar projects.

XIII. Purchases of electricity, oil, gas and other fuels used in a residence for all domestic uses including heating, and sales of such fuels when used by businesses and farms for farming and business purposes.

XIV. All vessels over 50 tons.

XV. Home and household items, including but not limited to, firewood and kindling, propane gas for grills and stoves, fertilizer, fungi-



cides, insecticides, cloth diapers, which are reusable and recyclable, plants and seeds which produce food for human consumption, and car seats.

XVI. All items of clothing and shoes and fabric goods under \$250 and fire, police, waitress and nurse work uniforms and footwear.

XVII. Purchases of bibles, prayer books, missals, and other religious texts.

77-F:14 Transactions not Covered. This chapter shall not cover the following transactions:

I. Private yard sales which consist of the casual sale of tangible personal property.

II. The transfer of tangible personal property to a corporation solely in consideration for the issuance of its stock, pursuant to a merger or consolidation effected under the laws of New Hampshire or any other jurisdiction.

III. The distribution of property by a corporation to its stockholders as a liquidating dividend.

IV. The distribution of property by a partnership to its partners in whole or partial liquidation.

V. The distribution of property by a limited liability company to its members in whole or partial liquidation.

VI. The transfer of property to a corporation upon its organization in consideration for the issuance of its stock.

VII. The contribution of property to a partnership in consideration for a partnership interest.

VIII. The contribution of property to a limited liability company in consideration for a membership interest.

IX. The sale of tangible personal property where the purpose of the vendee is to hold the thing transferred as security for the performance of an obligation of the vendor.

X. The sawing of lumber owned by the person requesting the sawing or such person's agent.

77-F:15 Organizations not Covered. Any purchase or service charged by or to any of the following or any use by any of the following are not subject to the sales and use taxes imposed under this chapter:

I. The state of New Hampshire, or any of its agencies, instrumentalities, public authorities, public corporations, including a public corporation created pursuant to agreement or compact with another state, or political subdivisions when it is the purchaser, user or consumer, or when it is a vendor of services or property of a kind not ordinarily sold by private persons.

II. The United States of America, any of its agencies and instrumentalities, insofar as it is immune from taxation when it is the purchaser, user or consumer, or when it sells services or property of a kind not ordinarily sold by private persons.

III. Organizations which qualify for exempt status under the provisions of Section 501(c)(3) of the United States Internal Revenue Code, as the same may be amended or redesignated, excepting sales, storage or use in activities which are mainly commercial enterprises; provided, however:

(a) That the organization first shall have obtained a certificate from the commissioner stating that it is entitled to the exemption;

(b) That the sale or service or use is for the exempt purpose of such organization; and

(c) That the vendor keeps a record of the purchase price of each such separate purchase, the name of the purchaser, the date of each separate purchase, and the number of the certificate.

IV. Purchases of building materials and supplies to be used in the construction, reconstruction, alteration, remodeling or repair of:

(a) Any building structure or other public work owned by or held in trust for the benefit of any governmental body or agency mentioned in paragraphs I and II of this section and used exclusively for public purposes;

(b) Any building or structure owned by or held in trust for the benefit of any organization described in paragraph III and used exclusively for the purposes upon which its exempt status is based; and

(c) Any building or housing project subject to the provisions of RSA 204-C, provided, however, that the governmental body or agency, the organization, or person has first obtained a certificate from the commissioner stating that it is entitled to the exemption and the vendor keeps a record of the purchase price of each separate purchase, the name of the purchaser, the date of each separate purchase, and the number of the certificate. In this paragraph, the words "building materials and supplies" shall include all materials and supplies consumed, employed or expended in the construction, reconstruction, alteration, remodeling, or repair of any building, structure, or other public work as well as the materials and supplies physically incorporated therein.

V. Organizations which qualify for exempt status under the provisions of Section 501(c)(4)-(13) and (19), and political organizations as defined in Section 527(e) of the United States Internal Revenue Code, as the same may be amended or redesignated, shall not be exempt from taxation of the purchase or use of tangible personal property as defined in RSA 77-F:1.

**77-F:16 Property Exempt From Use Tax.**

I. The following uses of property are not subject to the compensating use tax imposed under this chapter:

(a) Property used by the purchaser in this state prior to July 1, 1999.

(b) Property purchased by the user while a nonresident of this state, except in the case of tangible personal property which the user, in the performance of a contract, incorporates into real property located in the state and except in the case of vessels under 50 tons and used in the waters of this state for at least 30 days.

(c) Property or services to the extent that a retail sales or use tax was legally due and paid thereon, without any right to a refund or credit thereof, to any other state or jurisdiction within any other state but only when it is shown that the other state or jurisdiction allows a corresponding exemption with respect to the purchase or use of tangible personal property or services upon which such a purchase tax or compensating use tax was paid to this state. To the extent that the tax imposed by this chapter is at a higher rate than the rate of tax in the first taxing jurisdiction, this exemption shall be inapplicable and the tax imposed by RSA 77-F:4 shall apply to the extent of the difference in the rates.

(d) Property withdrawn from inventory for the purpose of donating such property to an entity described in RSA 77-F:15, I, II, or III.

II. A person while engaged in any manner in carrying on in this state any employment, trade, business or profession, not entirely in interstate or foreign commerce, shall not be deemed a nonresident with respect to the use in this state of property in that employment, trade, business or profession.

**77-F:17 Certificate or Affidavit of Exemption.** Unless a vendor shall have taken from the purchaser a certificate, signed by the purchaser and bearing the purchaser's name and address and the number of the purchaser's registration certificate, to the effect that the property was purchased for resale or the purchaser prior to taking delivery, furnishes to the vendor any affidavit, statement or additional evidence, documentary or otherwise,

which the commissioner may require demonstrating that the purchaser is an exempt organization described in RSA 77-F:15, the purchase shall be deemed a taxable purchase at retail. Provided, however, the commissioner may authorize a purchaser, who acquires tangible personal property or services under circumstances which make it impossible at the time of acquisition to determine the manner in which the tangible personal property or services will be used, to pay the tax directly to the commissioner and waive the collection of the tax by the vendor. Provided, further, the commissioner shall authorize any contractor, subcontractor or repairperson who acquires tangible personal property consisting of materials and supplies for use in erecting structures for others, or building on, or otherwise improving, altering, or repairing real property of others, to pay the tax directly to the commissioner and waive the collection of the tax by the vendor. No such authority shall be granted or exercised except upon application to the commissioner and the issuance by the commissioner of a direct payment permit. If a direct payment permit is granted, its use shall be subject to conditions specified by the commissioner and the payment of tax on all acquisitions pursuant to the permit shall be made directly to the commissioner by the permit holder.

#### 77-F:18 Computing Receipts and Consideration.

I. The retail purchase tax imposed under RSA 77-F:2 and the compensating use tax imposed under RSA 77-F:4 when computed in respect to tangible personal property wherever manufactured, processed or assembled and used by such manufacturer, processor or assembler in the regular course of business within the state, shall be based on the price at which items of the same kind of tangible personal property are offered for sale by such manufacturer, processor or assembler.

II. Tangible personal property which has been purchased by a resident of the state outside of this state for use outside of this state and subsequently becomes subject to the compensating use tax imposed under this chapter, shall be taxed on the basis of the purchase price of the property, provided however:

(a) That where a taxpayer affirmatively shows that the property was used outside the state by the taxpayer for more than 6 months prior to its use within this state, the property shall be taxed on the basis of current market value of the property at the time of its first use within this state but the value of the property, for compensating use tax purposes, may not exceed its cost.

(b) That the compensating use tax on the tangible personal property brought into this state, other than for complete consumption or for incorporation into real property located in this state, and used in the performance of a contract or subcontract within this state by a purchaser or user for a period of less than 6 months may be based, at the option of the taxpayer, on the fair rental value of the property for the period of use within this state.

III. For purposes of RSA 77-F:4, I the tax shall be at the rate of 4 percent of the consideration given or contracted to be given for the property or for the use of the property adjusted in the same manner as is the sales price under the purchase tax to arrive at "receipts."

IV. For purposes of RSA 77-F:4, II the tax shall be at the rate of 4 percent of the price at which items of the same kind of tangible personal property are offered for sale by the user.

#### 77-F:19 Returns.

I. Every person required to collect or pay tax under this chapter shall on or before the twenty-eighth day of February and the thirtieth day of each other month make and file a return for the preceding month with



the commissioner. The return of a vendor of tangible personal property shall show such vendor's receipts from sales and also the aggregate value of tangible personal property sold, the use of which is subject to tax under this chapter.

II. The commissioner may extend, for cause shown, the time of filing any return for a period not exceeding 3 months on such terms and conditions as the commissioner may require.

III. The commissioner may permit or require returns to be made covering other periods upon such dates as the commissioner specifies. In addition, the commissioner may require payment of tax liability at such intervals and based upon such classifications as the commissioner may designate. In prescribing the other periods to be covered by the return or intervals or classifications for payment of tax liability, the commissioner may take into account the dollar volume of tax involved as well as the need for insuring the prompt and orderly collection of the taxes imposed.

IV. The commissioner may require amended returns to be filed within 20 days after notice and to contain the information specified in the notice.

#### 77-F:20 Payment of Tax.

I. Every person required to file a return under this chapter shall, at the time of filing the return, pay to the commissioner the taxes imposed by this chapter as well as all other moneys collected by such person under this chapter; provided, however, that every person who collects the tax from purchasers of taxable items according to the tax bracket schedule of RSA 77-F:3 shall be allowed to retain, as partial compensation for services rendered to the state of New Hampshire in collecting the tax, any amount lawfully collected by such person in excess of the tax imposed by this chapter.

II. All the taxes for the period for which a return is required to be filed or for such lesser interval as shall have been designated by the commissioner, shall be due and payable to the commissioner on the date established for the filing of the return for that period, or on the date for such lesser interval as the commissioner has designated, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of receipts, or the value of property or services sold or purchased or the taxes due thereon.

#### 77-F:21 Surety Bonds.

I. When the commissioner deems it necessary to protect the revenues to be obtained under this chapter, the commissioner may, after notice and hearing, require any vendor required to collect the tax imposed by this chapter to file with the commissioner a bond issued by a surety company authorized by the New Hampshire insurance department to do business in this state, in an amount fixed by the commissioner, to secure the payment of any tax, interest or penalties due, or which may become due. The vendor shall file a bond within 10 days after the department has issued and mailed such notice. Surety bonds may be required in situations such as, but not limited to, failure to file returns, failure to make payments with returns at the time required by law, tender by a vendor of checks returned for insufficient funds, failure to pay interest and penalties assessed, vendors who are itinerant, transient or temporary, and any other situation which, in the discretion of the commissioner, renders the collection of the tax in jeopardy.

II. The surety on such bond shall be discharged from the liability accruing on the bond after the expiration of 60 days from the date on which the surety shall have lodged with the department a written request to be so discharged; but such request shall not discharge such surety from any liability already accrued or which shall accrue before

the expiration of said 60-day period. The duration of surety bonds shall be for one year only, unless the requirement is cancelled or revised by the commissioner before the expiration of the one-year period.

III. In lieu of a bond, cash in an amount prescribed by the commissioner may be deposited with the state treasurer who may, at any time, upon instructions from the commissioner and without notice to the depositor, apply the cash deposited to any tax or interest or penalties due. Cash deposited in lieu of a surety bond shall not earn interest.

IV. Failure to comply with the provisions of this section shall result in the suspension of the vendor's license, as provided in RSA 77-F:27.

#### 77-F:22 Determination of Tax.

I. If a return required by this chapter is not filed, or if a return when filed, is incorrect or insufficient, the amount of tax due shall be determined and assessed by the commissioner from any information available. If necessary, the tax may be estimated on the basis of external indices, such as stock on hand, purchases, rental paid, location, scale of rents or charges, comparable rents or charges, type of accommodations and service, number of employees or other factors.

II. The commissioner may provide by rule for the exclusion from taxable receipts of amounts representing sales where the contract of sale has been cancelled, the property returned or the receipt or charge has been ascertained to be uncollectable or, in the case the tax has been paid upon that receipt or charge, for refund or credit of the tax so paid.

77-F:23 Collection of Tax From Purchaser. Every person required to collect the tax shall collect the tax from the purchaser when collecting the price to which it applies. If the purchaser is given any sales slip, invoice, receipt or other statement or memorandum of the price paid or payable, the tax shall be stated, charged and shown separately on the first of the documents given to him. The tax shall be paid to the person required to collect it as trustee for and on account of the state.

77-F:24 Deferred Payment Purchases. The commissioner may provide that the tax upon receipts from purchases on the installment plan, seasonal purchases, or deferred payment purchases may be paid on the amount of each deferred payment and upon the date when the payment is received.

#### 77-F:25 Refunds.

I. Claims for refund or credit may be made by a customer who has actually paid the tax or by a person required to collect the tax, who has collected and paid over the tax to the commissioner, provided that the claim is timely made in accordance with RSA 21-J:28-a and RSA 21-J:29. No actual refund of moneys shall be made to a person until such person establishes to the satisfaction of the commissioner, under such rules as the commissioner may adopt, that such person has repaid to the customer the amount for which the application for refund is made. The commissioner may, in lieu of any refund, allow credit on payments due from the claimant.

II. If the commissioner determines, on a petition for refund or otherwise, that a person has paid an amount of tax under this chapter which, as of the date of the determination, exceeds the amount of tax liability owing from the person to the state, with respect to the current and all preceding taxable periods, under any provision of this title, the commissioner shall forthwith refund the excess amount to the person together with interest as provided in RSA 21-J:28.

#### 77-F:26 Proceedings to Recover Tax.

I. The commissioner may institute actions in the name of the state to recover any tax, interest on tax, additions to tax, or penalties imposed by this chapter.

II. In the collection of the tax imposed by this chapter, the commissioner may use all of the powers granted to tax collectors under RSA 80 for the collection of taxes, except that the tax imposed by this chapter shall not take precedence over prior recorded mortgages. The commissioner shall also have all of the duties imposed upon the tax collectors by RSA 80 that are applicable to the commissioner. The provisions of RSA 80:26 apply to the sale of land for the payment of taxes due under this chapter, and the state treasurer is authorized to purchase the land for the state. If the state purchases the land, the state treasurer shall certify the purchase to the governor, and the governor shall draw a warrant for the purchase price out of any money in the treasury not otherwise appropriated.

77-F:27 Suspension or Revocation of Certificates; Appeal.

I. The commissioner may, after notice and hearing, suspend or revoke the certificate of registration of any person required to collect the tax or may refuse to issue or renew any registration for failure to comply with this chapter or with any pertinent rules adopted hereunder.

II. Any person required to collect the tax aggrieved by a suspension, revocation, or refusal may appeal therefrom, in the same manner as provided in RSA 21-J:28-b for appeal for redetermination or reconsideration of assessments, within 10 days after written notice of the suspension, revocation or refusal has been mailed or delivered to such person.

III. If the appealing person required to collect the tax files a bond running to the state as provided in RSA 77-F:22, then the suspension or revocation shall be inoperative during the appeal.

77-F:28 Liens. If any person required to pay or collect and transmit a tax under this chapter neglects or refuses to pay the same after demand, the amount, together with all penalties and interest provided for in this chapter and together with any costs that may accrue in addition thereto, shall be a lien in favor of the state of New Hampshire upon all property and rights to property, whether real or personal, belonging to such person. Such lien shall arise at the time demand is made by the commissioner of taxes and shall continue until the liability for such sum with interest and costs is satisfied or becomes unenforceable. No lien upon real estate for taxes imposed by this chapter is valid and binding against any person other than the taxpayer until notice of such lien stating the name and address of the taxpayer and the amount of the tax due shall have been filed and recorded in the registry of deeds in the grantor index in the county in which such real estate is located. Notwithstanding the provisions of any other law, the lien shall continue and shall be valid and binding until the liability for the sum, with interest and costs, is satisfied or becomes unenforceable.

77-F:29 Disposition of Tax. All revenues collected under this chapter shall be deposited in the education trust fund established in RSA 198:39.

2 State Contribution to Retirement Benefits. Amend RSA 100-A:16, II (c) to read as follows:

(c) The contributions of each employer for benefits under the retirement system on account of group I members shall consist of a percentage of the earnable compensation of its members to be known as the "normal contribution", and an additional amount to be known as the "accrued liability contribution"; provided that, in the case of teachers, any employer, other than the state, shall pay [65] 100 percent of such total contributions, [and 35 percent thereof shall be paid by the state;] and provided further that in case of teacher members employed by the state the state shall pay both normal and accrued liability contributions. The rate percent of such



normal contribution in each instance shall be fixed on the basis of the liabilities of the system with respect to the particular members of the various member classifications as shown by actuarial valuation, except as provided in subparagraphs (h) and (i). With respect to the balance of the unfunded accrued liability attributable to the state for group I members, as of June 30, 1994, such balance shall be funded prospectively as an additional normal contribution percentage as determined by the actuary. Such additional normal contribution percentage shall be assessed against the state payroll for the respective group I members until such time as the unfunded accrued liability is fully funded.

3 New Subdivisions; State Aid for Educational Adequacy; Education Trust Fund; Commission. Amend RSA 198 by inserting after section 37 the following new subdivisions:

State Aid for Educational Adequacy; Education Trust Fund  
198:38 Definitions. In this subdivision:

I. "Municipality" means a city, town, or unincorporated place.

II. "Elementary school" means a school with any of the grades kindergarten through 8.

III. "High school" means a school with any of the grades 9 through 12.

IV. "Base expenditure per pupil" means the amounts calculated in accordance with RSA 198:39, II.

V. "Average base cost per pupil of an adequate education" means the amount as calculated in accordance with RSA 198:39, III.

VI. "Weighted pupils" means resident pupils who have been assigned to one or more of the following classifications:

(a) An elementary pupil, which shall include kindergarten pupils, 1.0.

(b) A high school pupil, 1.2.

(c) An elementary pupil who is eligible to receive a free or reduced-priced meal shall receive an additional weight of .14.

VII. "Educationally disabled child" means an educationally disabled child as defined in RSA 186-C:2, I.

VIII. "Consumer price index" means the consumer price index for urban consumers for Boston-Brockton-Nashua published by the United States Department of Labor.

IX. "Special education costs" means the cost of special education and educationally related services provided to educationally disabled children reported by school districts on the MS-25 form less any federal IDEA funds, state special education catastrophic aid, and special education medicaid reimbursement received by the districts.

X. "Average daily membership in attendance" means average daily membership in attendance as defined in RSA 189:1-d, III.

XI. "Average daily membership in residence" and "resident pupils" mean the average daily membership in residence as defined in RSA 189:1-d, IV.

XII. "Transportation costs" means the costs of transporting pupils to and from school and other school activities reported by school districts on the MS-25 form.

198:39 Education Trust Fund Created and Invested.

I. The state treasurer shall establish an education trust fund in the treasury. Moneys in such fund shall not be used for any purpose other than to distribute adequate education grants to municipalities pursuant to RSA 198:42 and make catastrophic aid payments under RSA 186-C:18, III(d). The state treasurer shall deposit into this fund immediately upon receipt:

(a) Sales tax revenues collected by the department of revenue administration under RSA 77-F.

(b) All moneys due the fund in accordance with RSA 284:21-j.

(c) The school portion of any revenue sharing funds distributed pursuant to RSA 31-A which were apportioned to school districts in the property tax rate calculations in 1998.

(d) Any other moneys appropriated from the general fund.

II. The education trust fund shall be nonlapsing. The state treasurer shall invest that part of the fund which is not needed for immediate distribution in short-term interest-bearing investments. The income from these investments shall be returned to the fund.

198:40 Methodology for Calculating the Cost of an Adequate Education.

I. For the biennium ending June 30, 2001, the department of education shall use financial and student membership data reported to it by school districts for the 1996-97 school year and statewide education improvement and assessment scores for 1997 in making the calculations required by this subdivision. For each school district the number of elementary pupils eligible to receive a free or reduced-priced meal shall be based on the district percentage of such eligible pupils reported to the department of education on October 1, 1997.

(a) For fiscal year 2000, the department of education shall adjust the average base cost per pupil of an adequate education, special education costs, and transportation costs by the change in the consumer price index between January 1997 and January 1998 and the average daily membership in residence by 2.2 percent.

(b) For fiscal year 2001, the department of education shall adjust the average base cost per pupil of an adequate education, special education costs, and transportation costs for fiscal year 2000 by the change in the consumer price index between January 1998 and January 1999 and the average daily membership in residence by 2.2 percent.

(c) If the general court makes no change in the method of calculating the cost of an adequate education for subsequent fiscal years, the average base cost per pupil for the previous fiscal year shall be adjusted by the change in the consumer price index between the January immediately preceding the beginning of the fiscal year of distribution and the second preceding January. In making the calculations required by this subdivision in subsequent fiscal years, the department of education shall use the average daily membership in residence, special education costs, and transportation costs for the second preceding school year and the district percentage of pupils eligible to receive a free or reduced-priced meal reported to the department of education on October 1 of the second preceding calendar year.

II. The department of education shall calculate the base expenditure per pupil for each school district that operates an elementary school by subtracting from the total expenditures at the elementary school level, tuition to other school districts or approved educational programs, capital costs and debt service on such costs, special education costs, food service costs, transportation costs, adult and continuing education, summer school, and federal revenues not otherwise deducted. For each school district, this amount shall be divided by the average daily membership in attendance at the elementary school level to obtain the base expenditure per pupil.

III. The cost of an adequate education shall be calculated as follows:

(a) The department of education shall identify those school districts where an average of 40 to 100 percent of the elementary pupils enrolled in the grades tested on the day testing began achieved a scaled

score equivalent to performance at the basic level or above in all areas tested in the statewide education improvement and assessment program administered pursuant to RSA 193-C.

(b) From the school districts identified in subparagraph III(a) of this section, the department of education shall then identify those school districts that have the lowest base expenditure per pupil as calculated pursuant to paragraph II and which represent, as nearly as possible, 50 percent of the average daily membership in attendance at the elementary level of the school districts identified in subparagraph III(a) of this section.

(c) The department of education shall calculate the average base cost per pupil of an adequate education by multiplying the base expenditure per pupil of each school district identified in subparagraph III(b) of this section by the average daily membership in attendance at each of the selected school districts, and then adding the results across all districts selected. This sum shall then be divided by the total average daily membership in attendance at the elementary school level of all of the selected school districts.

IV. The weighted average daily membership in residence for each district shall be calculated by combining the district's elementary average daily membership in residence with its weighted high school average daily membership in residence and the district's additional average daily membership in residence resulting from elementary pupils eligible to receive a free or reduced-priced meal. The weighted average daily membership in residence of pupils statewide shall be calculated by combining the weighted average daily membership in residence of each school district in the state.

V. For each fiscal year, the statewide cost of an adequate public education for all pupils shall be calculated by multiplying the average base cost per pupil of an adequate education by the weighted average daily membership in residence of pupils statewide and then adding 99.5 percent of total special education costs statewide plus 70 percent of total district transportation costs statewide.

198:41 Adequate Education Grant; Payments to School Districts.

I. Except for school districts that do not maintain schools, the state shall pay annually to each district an adequate education grant that is equal to the district's weighted average daily membership in residence multiplied by the average base cost per pupil of an adequate education plus 99.5 percent of the district's special education costs plus 70 percent of the district's transportation costs.

II. For school districts that do not maintain schools, the state shall pay annually to each school district the lesser of the following 2 calculations:

(a) The amount calculated in accordance with paragraph I of this section; or

(b) The total amount paid for items of current education expense as determined by the department of education.

198:42 Distribution Schedule of Adequate Education Grant.

I. The adequate education grant determined in RSA 198:41 shall be distributed to each school district from the education trust fund in 4 payments of 30 percent on August 1, 30 percent on October 1, 20 percent on January 1, and 20 percent on April 1 of each school year.

II. For the fiscal year beginning July 1, 1999, \$495,854,000 is hereby appropriated from the education trust fund created under RSA 198:39 to the department of revenue administration to fund the grants under RSA 198:41.



III. The general court is constitutionally obligated to fund the cost of an adequate education, and there are hereby appropriated the funds necessary to make the payments required under RSA 198:41. The governor is authorized to draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

IV. The department of revenue administration shall certify the amount of each grant to the state treasurer and direct the payment thereof to the school district.

198:43 Additional Education Expenditures. Nothing in this subdivision shall prevent the assessment and collection of property taxes locally, under general provisions of law, to meet budgeted expenses of education not funded through distributions from the education trust fund under RSA 198:39.

198:44 Use of Funds for Education Purposes.

I. Annually, each school district shall appropriate an amount that equals or exceeds the amount necessary to fund an adequate education for the pupils in that district. Notwithstanding any other provision of law, in the event a school district fails to appropriate at least the required amount, that amount shall be assessed and collected by the municipality, appropriated to the school district, and expended for educational purposes in accordance with paragraph IV without a vote of the school district.

II. On or before June 30 of each year, the individual with fiscal responsibility in each municipality shall submit a statement to the commissioner of revenue administration that the funds collected by the municipality pursuant to RSA 76:8 and the funds received from the state pursuant to RSA 198:42 have been expended for educational purposes in accordance with paragraph IV. The statement shall include the following: *"I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete."*

III. If a municipality uses any part of the funds collected pursuant to RSA 76:8 and received pursuant to RSA 198:42 for non-educational purposes, the municipality shall pay to the school district an amount equal to the portion of funds used for such non-educational purposes.

IV. The funds collected by municipalities pursuant to RSA 76:8 and the funds received from the state pursuant to RSA 198:42 shall be appropriated by a school district only for current education expenses or transfers to reserves or trusts funds and shall not be used for any other purpose.

V. On or before June 30 of each year, the individual with fiscal responsibility in each school district shall submit a statement to the commissioner of revenue administration that an amount of money that equals the amount necessary to fund an adequate education for the pupils in that district was used in accordance with paragraph IV. The statement shall include the following: *"I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete."*

198:45 Duties of the Department of Education and the Board of Education.

I. The department of education shall, on or before September 30 of each year, collect from the school districts final data concerning all aspects of student attendance for the school year ending June 30 of that year necessary to establish the average daily membership, average daily membership in residence, and weighted average daily membership in residence, including the municipality of residence for each pupil for that

year. The department of education shall submit a report by December 31 to the speaker of the house of representatives and the senate president to be used for purposes of determination by the legislature of the appropriation to the education trust fund. A copy of such report shall, at the same time, be given to the department of revenue administration.

II. The board of education shall adopt rules pursuant to RSA 541-A necessary to the proper administration of this subdivision.

198:46 Adequate Education and Education Financing Reform Commission Established; Membership.

I. There is hereby established an adequate education and education financing reform commission which shall be composed of 18 members as follows:

(a) The chairpersons of the house education and house finance committees, appointed by the speaker of the house.

(b) The chairpersons of the senate education and senate finance committees, appointed by the president of the senate.

(c) Four members appointed by the governor, one of whom shall be an elementary or secondary special education teacher, one of whom shall be a primary teacher who does not teach special education, and one of whom shall be a member of the business community.

(d) The chancellor of the university system of New Hampshire or designee.

(e) The commissioner of the regional community-technical college system.

(f) One member from the state board of education, appointed by the chairperson of the state board of education.

(g) One member from a special education advocacy organization, appointed by such organization; and

(h) Six members who shall be agreed to and jointly appointed by the governor, the president of the senate, and the speaker of the house consisting of the following:

(1) One local school board member, recommended by the New Hampshire School Boards Association.

(2) One school administrator, recommended by the New Hampshire School Administrators Association.

(3) One special education administrator at the elementary or secondary school level, recommended by the New Hampshire Association of Special Education Administrators.

(4) Two parents of school-age children, one of whom shall be the parent of a child with an educational disability.

(5) One member from the business community, who shall be associated with the School to Work Initiative.

(6) One school business official, recommended by the New Hampshire Association of School Business Officials.

II. The commission shall elect a chairperson from among its membership and shall form subcommittees necessary to perform its duties. The chairperson shall determine the frequency of meetings at its first meeting.

III. The members of the commission shall serve without compensation, provided that legislative members of the commission shall receive mileage at the legislative rate while attending to the duties of the commission, and provided that the parent members of the commission shall be reimbursed for travel expenses associated with their duties on the commission.

IV. In order to ensure that all students are provided an adequate education, the duties of the commission shall be as follows:

(a) Determine and recommend the costs of an adequate education for all students in New Hampshire by determining and calculating adjustments for individual school districts based on yearly inflation, cost of living variances, diseconomies of scale, transportation variability, demographics, including for school districts with a disproportionate number of students who are economically disadvantaged or have educational disabilities, and such other factors as deemed relevant.

(b) Determine and recommend the amount of state aid, including building aid, to be distributed to cities and towns based upon the cost of an adequate education as set forth in subparagraph (a) and the method for distributing the state aid.

(c) Recommend changes in policy and procedure in the areas of educational improvement and accountability.

(d) Recommend interim and permanent processes to ensure adequate planning and implementation at the local and state level of special education and educationally related services, including planning for and development, on an interagency basis, of local school based options for pupils who have been placed in alternative or separate schools who could be placed in appropriate less restrictive options if available.

V. The commission shall be divided into the following policy subcommittees: adequacy and cost, educational improvement and accountability, and special education funding.

VI. The commission shall report its findings and recommendations no later than December 1, 2000. The report shall include, for each recommendation, proposed implementation schedules with timelines, specific steps, agencies and persons responsible, and resources needed. Where feasible, all plans, measures and initiatives shall be proposed as legislation or regulation so that they will have the force of law. All recommendations and plans shall be designed to be fully implemented no later than September 1, 2004.

VII. The department of justice department of revenue administration, department of education, and department of health and human services shall provide the commission with assistance.

4 New Subparagraphs; Special Education; Catastrophic Aid Payments Constitutionally Obligated. Amend RSA 186-C:18, III by inserting after subparagraph (c) the following new subparagraph:

(d) For each fiscal year beginning with the fiscal year ending June 30, 2000, 0.5 percent of the total special education costs statewide adjusted as provided in RSA 198:40, I shall be appropriated from the education trust fund established in RSA 198:39 to the department of education to assist those school districts which, under rules adopted by the state board of education, qualify for emergency assistance in meeting special education catastrophic costs pursuant to this section.

(e) The general court is constitutionally obligated to fund the cost of an adequate education, and there are hereby appropriated for the biennium ending June 30, 2001, the funds necessary to make the payments required in this section. The governor is authorized to draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

5 Appropriation. The sum of \$150,000 for the fiscal year ending June 30, 2000, is hereby appropriated for the purposes of the commission established in RSA 198:46 as inserted by section 26 of this act. This sum shall be nonlapsing until June 30, 2001. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.



6 Minimum Property Tax Enforcement. Amend RSA 198:1 to read as follows:

198:1 Annual Tax. The selectmen in each town shall assess an annual tax of \$3.50 on each \$1,000 of the value of the ratable estate taxable therein for the support of the public schools. ***This amount shall be applied toward the state's constitutional obligation to provide an adequate education.***

7 Definitions; Meals and Rooms Tax; Operator. Amend RSA 78-A:3, IV to read as follows:

IV. "Operator" means any person operating a hotel, whether as owner or proprietor or lessee, sublessee, mortgagee, licensee, or otherwise; and any person charging for a taxable meal; and any person ~~engaged in both activities~~, ***corporation, partnership, proprietor, lessee, sublessee, mortgagee, licensee or otherwise engaged in the business of rental of motor vehicles.***

8 New Paragraphs; Meals and Rooms Tax; Motor Vehicle Rental; Definitions. Amend RSA 78-A:3 by inserting after paragraph XIII the following new paragraphs:

XIV. "Motor vehicle" means a self-propelled vehicle designed to transport persons or property on a public highway, including a van or jeep. The term does not include the following:

- (a) A device moved only by human power;
- (b) A device used exclusively on stationary rails or tracks;
- (c) Road-building machinery; or
- (d) A mobile office.

XV. "Rental agreement" means an agreement by the owner of a motor vehicle to provide, for not longer than 180 days, the exclusive use of that motor vehicle to another for consideration.

XVI. "Gross rental receipts" means value received or promised as consideration to the owner of a motor vehicle for rental of the vehicle, but does not include:

- (a) Separately stated charges for insurance;
- (b) Charges for damages to the motor vehicle occurring during the rental agreement period;
- (c) Separately stated charges for motor fuel sold by the owner of the motor vehicle.

XVII. "Owner of a motor vehicle" means a person named in the certificate of title as the owner of the vehicle or a person who has the exclusive use of a motor vehicle by reason of rental and holds the vehicle for re-rental.

XVIII. "Department" means the department of revenue administration.

XIX. "Renter" means any person who, for consideration paid to another, is provided a vehicle under a rental agreement.

9 Meals and Rooms Tax; Licenses Required; Penalty. Amend RSA 78-A:4 to read as follows:

78-A:4 Licenses Required; Penalty.

I. Each operator shall register with the department the name and address of each place of business within the state where ~~he~~ ***it*** operates a hotel ~~or~~, ***sells taxable meals, or provides rentals of motor vehicles.*** The operator shall pay \$5 for each registration, upon receipt of which the department shall issue a license for each place in such form as it determines, attesting that the registration has been made. The license expires on June 30 in each odd-numbered year unless sooner revoked or suspended by the department. The license shall be conspicuously posted in a public area upon the premises to which it relates.

II. No person shall engage in serving taxable meals [or], renting rooms, **or renting motor vehicles** without first obtaining the license required by this section. The license is nonassignable and cannot be transferred. Any person who fails to register or obtain a license as provided in this section shall be subject to the penalty provisions of RSA 21-J:39.

10 New Paragraph; Tax Imposed on Motor Vehicle Rentals. Amend RSA 78-A:6 by inserting after paragraph II the following new paragraph:

II-a. A tax of 8 percent is imposed upon the gross rental receipts of each rental.

11 Meals and Rooms Tax; Collection of Tax. Amend RSA 78-A:7, I to read as follows:

I. The operator shall either state the amount of the tax to each occupant [or], purchaser of a meal **or renter**, or state that the tax is included in the price of the occupancy or meal **or the gross rental receipts received**. The operator shall demand and collect the tax from the occupant [or], purchaser, **or renter**. The occupant [or], purchaser, **or renter** shall pay the tax to the operator. If the tax is included in the price of the meal or occupancy **or the gross rental receipts received**, upon request the operator shall state to the purchaser [or], occupant, **or renter** the amount of the tax.

12 New Subparagraph; Education Trust Fund. Amend RSA 6:12, I by inserting after subparagraph (vvv) the following new subparagraph:

(www) Money received under RSA 77-F, and from the sweepstakes fund, which shall be credited to the education trust fund under RSA 198:39.

13 Sweepstakes. RSA 284:21-j is repealed and reenacted to read as follows:

284:21-j Establishment. The state treasurer shall credit all moneys received from the sweepstakes commission, and interest received on such moneys, to a special fund from which the treasurer shall pay all expenses of the commission incident to the administration of this subdivision and RSA 287-E. Any balance left in such fund after such expenses are paid shall be deposited in the education trust fund established under RSA 198:39.

14 Transition. As of July 1, 1999, all funds, from any source derived, which would be distributed as foundation aid and kindergarten aid shall be deposited in the education trust fund under RSA 198:39, including the \$62,000,000 appropriated under 1998, 389:16, II.

15 Removing Reference to Foundation Aid. Amend RSA 198:21, V to read as follows:

V. No pupil counted by any school district for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be ~~[included in average daily membership for the purposes of foundation aid or]~~ counted for the purposes of grants pursuant to RSA 198:22.

16 Removing Reference to Foundation Aid. Amend RSA 198:22, V to read as follows:

V. No pupil counted by any school for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be ~~[included in average daily membership for the purposes of foundation aid or]~~ counted for the purpose of grants pursuant to RSA 198:21.

17 Special Provision for Foundation Aid. Notwithstanding the repeal pursuant to section 18 of this act of RSA 198:27-37, relative to foundation aid and alternative foundation aid, the payment of foundation aid

to be made in April 1999 pursuant to RSA 198:31 before such section is repealed, shall be calculated by the department of education and distributed to the recipients as if such repeal had not occurred.

18 Repeal. The following are repealed:

- I. RSA 78:20, relative to the applicability of the tobacco tax.
- II. RSA 78-B:10-a, relative to the real estate transfer questionnaire.
- III. RSA 83-D, relative to the tax on nuclear station property.
- IV. RSA 21-J:3, XXIII, relative to the commissioner of revenue administration's duty to determine local per capita income for purposes of foundation aid.
- V. RSA 21-J:13, XI, relative to the form and content of the real estate transfer questionnaire.

VI. RSA 194-B:11, VIII, relative to foundation aid in relation to charter and open enrollment schools.

VII. RSA 198:1-3, relative to required annual district property taxes.

VIII. RSA 198:15-i-RSA 198:15-q, relative to kindergarten incentive program, kindergarten aid and alternative kindergarten programs.

IX. RSA 198:21, V, relative to the applicability of foundation aid and child benefit service grant recipients in the calculation of average daily membership.

X. RSA 198:22, V, relative to the applicability of foundation aid and dual enrollment grant recipients in the calculation of average daily membership.

XI. RSA 198:27-37, relative to foundation aid and alternative foundation aid.

19 Effective Date. This act shall take effect April 1, 1999.

1999-0563s

#### AMENDED ANALYSIS

I. This bill provides for funding of an adequate education by:

- (a) Establishing a 4 percent sales tax.
- (b) Adding a tax on rental of motor vehicles to the meals and rooms tax.
- (c) Dedicating certain other state revenues to education.
- (d) Requiring the minimum property tax of \$3.50 per \$1,000 to be applied toward the state's constitutional obligation to provide an adequate education.

II. This bill:

(a) Establishes an educational adequacy and education financing reform commission.

(b) Establishes a system for calculating and disbursing state grants for educational adequacy for fiscal years 2000 and 2001 by multiplying the average base cost per pupil of an adequate education by the weighted number of the average daily membership in residence of pupils statewide and adding to that sum 70 percent of total district transportation costs and 99.5 percent of the district's costs for special education less any federal or state moneys received to offset such special education expenses.

(c) Appropriates funds to the commission for the purposes of this bill.

(d) Provides that all expenses related to catastrophic special education are constitutionally mandated and shall be borne by the state.

SENATOR GORDON: At this point in time, I am so tired that I am not sure that I can rise before you to speak today. I come before you with a proposal today on a sales tax. Before you, I already handed out a basic description. I handed out earlier today a description of the plan. The plan would raise \$700 million. It would raise the \$700 million with \$370 million from a sales tax at 4 percent. The plan would require that we en-



force our current statute which is on the books in New Hampshire which is RSA 198:1 which requires every town to pay a minimum of \$3.50 in property tax per thousand of equalized evaluation which raises \$222 million. It also includes an extension of the Rooms and Meals Tax to rental cars which seems to be the most popular subject of the day. Finally, it includes existing state support to education, which has \$104.5 million, which raises the total revenue amount of \$706.5 million. I never thought that I would come before the body proposing a sales tax or any other type of broad base tax. I do it with a great deal of reluctance, but I do it, not because it might necessarily be my first choice in the way that we would fund education, but what I have come to find out, that in many cases, it is people's second choice and it may be the only choice that we can make in terms of coming up with a funding solution. The reason that I chose a sales tax is that I was uncomfortable with the other plans that have been placed before us. I was uncomfortable with the other plans because I don't think that they sit on a stable basis. The income tax, which I indicated that I might be able to support with some changes, doesn't appear like it is going to go forward at all; therefore, I think that we need a tax plan with some type of foundations. Some type of bed that we can rely on into the future. I don't think that a stable bed can be made from tobacco settlement proceeds, or increases in tobacco tax, or new taxes on capital gains, or increases on small businesses with business profits tax or the BET. I also don't think that you can build a stable education plan based upon casino gambling. I think that it sends entirely the wrong message. I don't think that it is a stable revenue source into the future and I don't feel that we should be building education on that basis or funding education on that basis. One of my constituents wrote me a letter this week and was quite disappointed with the vote on the income tax, but they said that if there couldn't be an income tax, that they fully supported the sales tax. The reason that they did was because the sales tax is understandable, it is stable and it is evenly applied and I agree with him. It may not be anybody's first choice, but it is a good second choice. The sales tax at 4 percent, as you all know, would be lower than the tax which is applied in other states around us. There has been some difficulties with the sales tax, you are very much aware of them. One is that in terms of percentage, it perhaps doesn't raise as much money as other tax forms, that is one of the reasons why I think we dismissed it earlier. The second reason is that it is a bit regressive. It does, as was indicated in our discussion on the income tax, fall a little more heavily on the less affluent. The third reason is that it will have an impact on the businesses that border the state. So your natural inclination is to avoid doing anything that might harm or endanger the New Hampshire economy. I certainly do not want to do that. But I took some heart in the words of Senator Squires when he was talking on the income tax the other day. He said, "Why is New Hampshire the PX of the rest of New England?" That is a good question. Why is it that we build our business in the state on an aberration of the tax system? Why is it that when anyone would expect that when they are doing business in this state that our tax system would not change as it has in other states? I believe that is true. I believe that although I believe that every tax system will do harm, I believe that the sales tax would do less harm than others. Even the income tax, I firmly believe that if we enacted an income tax, the effect of the income tax in the southern part of the state would be far more dramatic and be far more hurtful on the economy of the southern tier than a sales tax. I believe that a sales tax probably, out of all of the taxing alternatives, is probably the most popu-

lar, at least with my constituents. I recognize that I do represent a lot of towns who are not border communities. I do represent some towns that are border communities, and I know that the selectmen in those towns support a sales tax. Incorporated into my bill, you are probably going to look at the adequacy number and we have had a lot of discussion today on adequacy at \$700 million. I am very comfortable with the \$700 million number, although I know many of you are not. The reason that I am comfortable with that is because it sends out roughly \$3500 per student. I will use the example that I used in the Senate Finance Committee, I believe that is more than enough money in the first two years, in the transition years, to ensure that every child in this state has an adequate education. It is enough money to give us an opportunity to see where we are going to go with adequacy of education. Just as Senator King spoke this morning and said that "what we need to do is fund to a level where we can ensure that there is adequate education in the next two years, and then find out where we are going to." I think that this is important. I have mentioned a number of times, I believe, that the cost of education is going to increase substantially. Once we send large amounts of money out to the school districts, it stands to sense that it will. It stands to reason that it will. In fact, we expect it will. In fact we want it to, because that is what the Claremont suit is all about; because some school districts can't afford to give the kids the education that they feel that they deserve, so I would expect that there is going to be more money spent. But at this point in time, we do not know whether that is going to be \$50 million, \$100 million or \$200 million. When we do that, I fully believe that that additional spending is going to affect the cost of adequacy and we are going to have to adjust for that. So, I think that there is good reason for us to proceed with moderation and I believe that is what our constituents would expect us to do. To take a good reasonable business-like approach. I don't have a problem with the \$700 million, although I know that everything is subject to compromise just as we discussed earlier downstairs. But the \$700 million, I believe, is a fair number. The example that I have used is Manchester. Senator D'Allesandro, Manchester is one of the towns that we are holding up as an example of a town that is already providing an adequate education. It is one of the ones where we are using their number to decide if that is what an adequate education is. More than 40 percent of their kids are scoring at a basic level or above on the assessment tests. So they are one of the towns that we are using. Now, what we are going to do is, we are going to send them out, depending on the plan that you have, anywhere from \$3500 per student to \$5000 per student or more, even though we already have decided that they are providing an adequate education. If we sent out to Manchester, \$3500 per student and they are already providing an adequate education, I think that we can be relatively assured that they will continue to provide an adequate education. Seven hundred million dollars is a huge investment and it is something to be proud of. We would go from being last in the country to being in the upper half of the country, just as Senator Squires pointed out on his chart the other day. I would not be embarrassed by the \$700 million number. The other thing that this bill does is that it has a distribution system which is different than the adequacy commission and it is something, that again, you have heard too many times, but I feel very strongly about, and that is that we shouldn't just be sending the money out on a per student basis, just blanket. I firmly believe that we should pay all of the special education costs, which I think, generally we probably have agreed upon now, the full cost of education, but there is

a stake in the first year or first two years, the biennium, that should pick up the cost of instruction to make sure that the teachers in Franklin are paid enough so that they don't have that 30 percent turnover every year. We should pay for teacher's salaries and benefits, we should pay for instructional costs, classroom materials and development, because if you are going to make a difference in education, you need to invest in instruction not simply in the operation. Let the local schools pay for the operation of their schools. I believe that. I believe that is the reason business-like approach to dealing with the problem and not just simply responding to the suit. When I listen to my constituents, my constituents say over and over again the same things, which I know, that I get up and say again and again, is that they want us to proceed with moderation and they would like us to have a plan that they can understand. They would like us to reduce our property taxes as Senator King so articulately said this morning. They would like to see improvement in education. They would like to see all of these things come. I think that this amendment does that. The sales tax, I know, is not the most popular thing, but the bottom line is this: Unless we get off of the dime, unless we are willing to compromise, unless we are willing to make hard decisions, we are not going to solve this problem, and the sales tax is one of the ways to do it. I think that it is a more acceptable alternative; or maybe the way that I should approach it is a less harmful alternative than many of the other ones that have been proposed today. I also think that it will put education on a sound foundation and I would much rather do that than to put it on a fluid base with a mixture of potpourri or a mixture of taxes or sources of revenue where we won't know where they are going to be in the future. This plan also has the advantages of keeping the property tax down to a minimum. I strongly believe that we should do that, because we can rely on a continuing basis on the property tax and we can make that uniform...as people have said that is where it is going to be ratcheted up in the future. We can make the property tax uniform, but we already know that our heavy reliance on the property tax has caused some unfairness and, if we make it uniform, then it is just going to be uniformly unfair. So overall, I think that this is a better plan. It is a simple plan and it is straightforward. It requires a tough decision on your part, but I would like to see you adopt it. I would at least like to see us keep the sales tax on the table in our negotiations. Thank you, Mr. President.

SENATOR FERNALD: Senator Gordon, will this sales tax exclude food or clothing?

SENATOR GORDON: Yes. This sales tax excludes food, all clothing under \$250. It would exclude prescriptions; it would exclude things that have to do with your burial, like caskets. It does exclude necessities of life.

SENATOR FERNALD: Earlier today commissioner Arnold told me that he believed a 4 percent sales tax that excluded food and clothing would bring in \$322 million. I didn't know where your number came from and if you could explain, maybe there was a discrepancy or a difference?

SENATOR GORDON: Well, there is a difference because this number came from Mr. Arnold as well. I can tell you that if Mr. Arnold told you \$322 million, then something has happened in the last week. If you look at the fiscal note, this bill is adapted from a bill that was presented in the House and the fiscal note on that bill was presented and it said in essence, for every percentage of sales tax, it would produce \$97.5 mil-



lion. I questioned whether or not that was accurate, so I then e-mailed Stan Arnold and asked him if it that was accurate? He came back and said that you could reliably count on \$90 million per percentage.

**SENATOR FERNALD:** Thank you.

**SENATOR JOHNSON:** I want to thank Senator Gordon for bringing this forward today. I had talked with him previously and I was interested in it. It is a compromise. I am comfortable with the \$700 to \$6.5 million. I am not quite sure if I am there on the 4 percent sales tax; but it is certainly something that, as I said earlier, that my district which borders Maine, I have had four occasions to have meetings over there and I have spoken to several automobile dealers and also the convenience stores, and in the last three to four weeks, it seems that that shift is there. Just as a further compromise, I just want to let you know that the 15 towns that Senator Gordon points out here, will have a net increase, six of those towns are in my district. Am I taking a risk? Probably I am, but I am willing to compromise and I think that it is a good compromise. Thank you.

**SENATOR TROMBLY:** I would move that we divide section one from the rest of the bill. Section one being the sales tax. I ask that we vote separately on the sales tax portion of this legislation. I think that there is a certain amount of merits to certain portions of this bill. I think that it is the first bill that comes across with a great deal of compromise in it. I think that the sales tax portion is most certainly a new broad based element introduced in a different fashion to this debate and I think that we should consider the sales tax portion of this separately from the other part of the bill. I don't believe, Mr. President, that a question to divide is subject to a vote of the Senate, but most certainly, if you rule that way, I won't challenge you.

**Recess.**

**Out of Recess.**

**Senator Trombly moved to divide the question.**

**SENATOR TROMBLY:** I just wish to briefly explain my motion to you. This bill is going to be voted on and presumably, if it were contained in its full form, it would probably go down to defeat. Senator D'Allesandro is then going to offer a plan, which in all likelihood, is going to go down to defeat. Senator King may or may not offer a plan, which will receive great praise, but will probably go down to defeat. At some point we need to get together. I think what the Senate President did today was tremendous. It gave us the opportunity to discuss various portions of these plans in an open atmosphere, but now we are going to have to go back perhaps, behind close doors, perhaps not, and talk about the various parts of what has been defeated. We need, I believe, the Senate as a whole, needs some sort of an idea than us bouncing back and forth, room to room like beach balls, conveying our various opinions and beliefs about where our colleagues stand on various portions of what may ultimately be the compromise. I have asked to separate this question so that we could have some sort of an idea of where we all stand. Now, having asked to separate this question, those Senators that wish to stand and say, 'hey, I am at 2 percent' and I believe that Senator Johnson did that, he said that he was for a sales tax but that he was not quite where Senator Gordon was. If you want to do that, you will have that opportunity, but when we are done, we will have some sort of an idea where there is a consensus on this portion of Senator Gordon's bill. That way, the im-

pression isn't if we are voting against this because we don't like \$700 million for adequacy, the impression is given that the whole thing should be flushed down the toilet. So that is why I think that it is very important for us to take this step now with this bill, where it truly is divisible and start that process. That, Mr. President, is why I did it. Also, just so the Senate will know, I believe that I have gone through this and I believe that the section to be divided begins on page one and ends on line two of page 15. Thank you, Mr. President.

SENATOR SQUIRES: I thought that Senator Gordon's presentation was articulate and persuasive and he is also admirable because he forthrightly pointed out some deficiencies with the sales tax. I am speaking on one point, from a viewpoint in Nashua. Nashua is the largest, single entity in the state of New Hampshire, engaged in cross border sales. The region that I represent is in the same category. Every business leader, every community leader that has spoken to me in Nashua opposes the sales tax for the obvious reason that it is not in the interest of that area. Secondly, it is regressive. No one disputes that, for everyone of which Senator Gordon acknowledged. My main concern after that is entirely different. I think that it is not stable. It used to be stable, but it is not stable anymore. The reason for that is Internet commerce. It is inconceivable to me that the hundreds of thousands of people doing business over the internet can track the sales tax policy of every state that has one, and know that, when I order a suit on the internet for \$260, I get a tax and when I order one for \$240, I do not. I think that is simply not possible. It is a change as fundamental as when we shifted from the stock in trade tax, where the element that was taxed in business was essentially our inventory and into an entirely different economy. We are moving now into an area with which you can't tax this for sales. The Internet sales by 2002 are estimated to be something like a trillion dollars. Those are dollars that are no longer captured by the local economies, unless by some magic the complexity of that can be mastered, which I think that they cannot. So that one of the appeals that you heard in this bill is its stability. I rise to say that I think that is not the case. I think that it will decline. We are in the sunset of a sales tax, as a former revenue for governments, and for that reason, I cannot support it.

SENATOR WHEELER: I rise in support of Senator Trombly's motion to divide the question, because I do think that it is important for us to talk about the different elements that we might consider. I agree with all of what Senator Squires said about a sales tax and I never thought that I would be standing up and saying that I would be willing to vote for a sales tax, but I want you to know that I am capable of compromise and I have become like a new version of the red queen in Alice in Wonderland; I find that I can think of six impossible taxes before breakfast everyday now. So this is one that I would vote for in the interest of reaching a solution, although I know that it is regressive and it will hurt the poor disproportionately, and I think that Senator Squire's comments about the Internet are excellent, but I also know that taxes come and taxes go and we can all hurt if it doesn't work out right.

SENATOR FERNALD: I went to college down in Amherst, Massachusetts more years ago than I care to remember. About the time that I started school there, there was a mall in the neighboring town of Hadley called the Mountain Farms Mall. It was your basic mall, with two or three anchors, and a whole bunch of little stuff and a movie theatre. At about the time that I started school, they began construction on another mall right

next to the first mall with anchor stores and so on and so forth. What happened when that mall opened up is that it emptied out the other mall and Hadley ended up with an empty mall. It had movie theatres and a popcorn salesman, and a T-shirt salesman, and that was about it, and the rest of it was empty. Now I mention this because in... I am not sure whether it is Senator Squire's district or Senator Pignatelli's district, we have a mall that is built on the Massachusetts border, the Pheasant Lane Mall. Senator Pignatelli's district. I understand that most, if not all, of the tenants there, have clauses in their lease that allow them to break their leases if a sales tax is put into place in New Hampshire. That mall is just an indication of how dependent the retailers in New Hampshire are on the absence of a sales tax. If we implement a sales tax, not only are we going to empty out that mall, but we are going to empty out storefronts all across the southern part of the state, and to a certain extent, the western part and the eastern part where we have borders. We have a very tough decision to make here, and we need to find a way to fund the schools and we need to equitably distribute the burden to everybody in the state. Doing a sales tax is going to put a lot of the onus of that burden on the border regions, particularly the southern border, it will not be an inequitable distribution of the burden. The day that we do a sales tax, hundreds of people will lose their jobs because the owners of shops will realize that 10 or 20 or 30 percent of their business is gone and they will instantly react by laying off the most vulnerable people in our society, the people who work for \$6 or \$7 an hour behind the cash register. If we are going to consider a sales tax, and maybe that is where we are pushed if we are not going to vote on an income tax, then I think that we should consider a consumption tax, which does basically the same thing, but on a much broader base. A sales tax at 4 percent kills off businesses and jobs in New Hampshire and maybe a consumption tax at 1.5 percent isn't quite so bad. Thank you.

SENATOR FRASER: I would like to address the Chair, Mr. President. Mr. President, I think that I probably should have made this request when we were deliberating downstairs. I don't think that it is too late. I haven't got a clue as to how to do it. It strikes me at this juncture that there are a lot of ideas out here as to how to address Claremont II. I think that the thing that is lacking in our scenario at the moment is, what is the bottom line? What can a majority of this body sit still for so far as a number? As you know, when I spoke downstairs, I am comfortable with \$800 million. It just strikes me, Mr. President, if there is some way that we could get over that hump, as to what the average is among this body, I think that we would probably be able to have an opportunity to fill in the blanks. I do not know that, but I suspect that until such time as we seem to reach some sort of an accord as to what everyone could sit still for, as far as the bottom line is concerned, I think that we could literally hear about sales taxes and consumption taxes and this tax and that tax, but they are all disjointed. If we had a bottom line, Mr. President, that we could all focus on, maybe there is some way to get this thing done. I don't know.

SENATOR D'ALLESANDRO: Senator Fraser, we are in the process of looking at a number of items. It seems to me or would you agree, that we have to see these through and hear the debate on these items and then come to some conclusions. We know what our bottom lines are, we are articulating them as we move through each one of these items. Until each Senator has had that opportunity, it seems to me, that we would be premature to say to stop and hold the works and set a bottom line.



We have numbers and people are presenting them, and we have to go through this process. That is what democracy is all about. You can't stop in the middle of the process, or would you believe, that you can't stop in the middle of the process and go one way or the other? You have to bring it to fruition.

SENATOR FRASER: With all due respect, Senator, I probably should have requested some sort of a straw vote when we were downstairs, but my sense is that a lot of us probably would be willing to bite the bullet if we knew that by biting the bullet we were going to attain some sort of an end result. You might be right, I don't know. All that I know is that personally, I am uncomfortable about voting on a bunch of disjointed ideas when we don't know what we are trying to accomplish.

SENATOR PIGNATLELLI: I rise in, I guess, support of Senator Trombly's plan, but in opposition to the sales tax and I will tell you why. I represent the district in Nashua where the Pheasant Lane resides. It is a great mall and a lot of people go shopping there. When I have gone down there, three or four out of the five cars are Massachusetts's cars. There is another mall 18 miles down the road in Massachusetts, it is the Burlington Mall. It is another nice mall. It is a little larger, more stores, more variety. If we are going to count on the \$370 million from a 4 percent sales tax based on our current buying patterns, I can guarantee you that the buying patterns at the Pheasant Lane Mall will change dramatically if we have a 4 percent sales tax. Not only will people who shop in Nashua, because it is convenient, go down to Burlington, but you can find more stuff in the variety that they have in Burlington. I will be going to Burlington to find what I need. So I will be voting against the sales tax.

SENATOR BELOW: I rise in opposition to the 4 percent sales tax. I do appreciate what Senator Gordon has said and the difficult choices that we have to make, but I do come from the city of Lebanon, which is the states second smallest city. It has about 11,000 to 12,000 but it is the tenth largest retail center in the entire state. That is largely because of the lack of a sales tax in the business that it draws at the junction of interstate 89 and 91 with all of the huge Vermont market coming over to West Lebanon, New Hampshire. In addition, the regressivity of the sales tax concerns me. Our property taxes that we have discussed is regressive. It hits the poor, the bottom 20 percent about three times as heavy as the top income earners in New Hampshire as a percent income. Our existing mixture of sales taxes and consumption taxes, excise taxes fall on the less affluent by a factor of about ten to one. The bottom 20 percent spend about 2.5 percent of their income on sales and excise tax in New Hampshire while the top 5 percent only about 2/10s of a percent. Now I don't know about this particular sales tax, because it does exempt clothing and food which is important, and it may be that it is not that regressive, so it may be something to take a closer look at, but that is a concern. Finally, I would mention a third concern which is that unlike the property tax or an income tax, a sales tax is not deductible on people's federal income tax, so there is an effect that replacing property tax with sales tax will probably increase the amount of income tax money that people remit to the federal treasury from New Hampshire. Finally, I would say that there has been a question of what is the relative economic impact? To my knowledge, the only study that has been done in the past few months is the one that was done by THINK New Hampshire using a econometric model. I just bring it to people's attention because the principal, the person who directed that, John Richardson, former legislative counsel for the

U.S. Treasury Department Office of Tax Policy, gave me a call last week and although he is a very conservative person and disagrees with the Supreme Court decision, he wanted to let me know that he at this point, strongly supported the income tax idea because he thought that it was the only one that wouldn't harm the New Hampshire economy. In fact, he was very concerned that a sales or consumption tax would have a harmful effect and that indeed, is what their study had shown. Not this particular sales tax, but it was the Peterson Consumption Tax which showed a distinctive negative impact on the economy, whereas the income tax either had a basically neutral effect according to this study or an actual positive effect depending on how much increase of spending was assumed. So I wish that we had time to take a closer look at it in terms of what...where the incidents would be or whether or not...or what the effect on the economy would be, so it is a difficult choice to be made here.

SENATOR COHEN: Senator Below, would you believe that I have spoken to retailers in my area, which is close to Massachusetts as well as to Maine, and places that are appliance dealers, places like State Street Discount, I have spoken to the owners there and they have told me that if there were a sales tax, even just a perception of a sales tax, they figure that they would lose one-third of their business. These same people told me that they felt that even though they personally would take a hit from an income tax that that is what they would support. Would you believe that?

SENATOR BELOW: I do believe it and I think that the lack of a sales tax is a clear and distinct New Hampshire advantage, that is apparent to visitors and people who drive into our state specifically to shop.

SENATOR J. KING: I rise in opposition, mainly because I think that it is the most regressive of all taxes. We are here talking about trying to make it better for the communities that can't afford it, so what we are going to do is, they are still going to pay their taxes the same, but now we are going to give them 4 percent. I am talking about the poor communities. We are going to give them 4 percent more to pay, which they can't afford to do, what they are doing, basically what we are doing, is adding another 4 percent to someone who can't afford it to begin with. Some can, but the ones that we are concerned about can't do it. Therefore, I oppose it.

SENATOR KLEMM: I also rise in opposition to the sales tax. I represent a border community. My chamber has told me that a sales tax would be devastating to my area. Senator Gordon had asked me to prove if the sales tax would actually reduce sales, people coming up to our area. I have been doing some research. I haven't been able to get the final proof, but I think that I have come across some interesting factors. I was able to get from the office of State Planning, the rooms and meals receipts for the year of 1998 by county. I would just like to read a few of these figures off. In 1998 Belknap county paid, the state received \$100 million in rooms and meals. Carroll county, \$128 million. Cheshire county, \$50 million. Coos \$48 million. Grafton, \$156 million. Hillsborough, \$477 million. Merrimack, \$120 million. Rockingham, \$433 million. Strafford, \$77 million. Sullivan, \$24 million. Now I know that Senator Trombly and I go out to eat a lot, but if we look at our border communities, I believe that a lot of these monies that the state receives comes from people coming from out-of-state to shop. I also would like to state that the mall that is in Nashua and the mall that is at Rockingham Park, are under agreement to be sold for \$10.4 billion, and that sales were

about to go through before the Claremont situation hit us. That sales is currently on hold, and the reason that it is currently on hold, is because the buyers are afraid that we are going to institute a sales tax and that would negate the deal. Now if that negates the deal, I don't feel one way or the other, but I think that that says something about what they feel the sales tax would do to the state of New Hampshire.

SENATOR JOHNSON: I would just like to look at both ends of the spectrum, if I may? I recall a number of years ago there was a beautiful mall that was built in tax-free Newington and that went belly-up. On the other end, we have Kittery over there that has a much higher sales tax than many other areas and they have been booming for years, so I think that some of this is really relevant to what we are talking about.

SENATOR TROMBLY: Mr. President, I think that it is manifestly clear where the Senate may stand on this issue. I withdraw my request to divide the question.

SENATOR COHEN: Senator Johnson, since you brought up the mall in Newington, I have to ask, would you believe that that mall is doing very well indeed?

SENATOR JOHNSON: Yes, I would believe that if you tell me it is so, Senator.

**Senator Trombly withdrew his motion.**

**Senator Gordon moved to divide the question.**

**A division vote is requested.**

**Yeas: 14 - Nays: 9**

**Adopted.**

**Question is divided.**

**Question is on the amendment up to Pg. 15, Line 2.**

**1999-0563s**

**09/10**

### **Floor Amendment to HB 112-FN-LOCAL**

Amend the title of the bill by replacing it with the following:

AN ACT establishing state funding of an adequate education by imposing a sales tax, extending the meals and rooms tax to rental cars, and dedicating certain state revenues to education; and establishing an adequate education and education financing reform commission and making an appropriation therefor.

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; Sales and Use Tax. Amend RSA by inserting after chapter 77-E the following new chapter:

### **CHAPTER 77-F**

#### **SALES AND USE TAX**

77-F:1 Definitions. In this chapter:

I. "Casual sale" means an isolated or occasional sale of an item of tangible personal property by a person who is not regularly engaged in the business of making sales of that general type of property at retail



where the property was obtained by the person making the sale, through purchase or otherwise, for his or her own use. Aircraft, snowmobiles, motorboats, and vessels, are hereby specifically excluded from the definition of casual sale.

II. "Commissioner" means the commissioner of the department of revenue administration.

III. "In this state" or "in the state" means within the exterior limits of the state of New Hampshire and includes all territory within these limits owned by or ceded to the United States of America.

IV. "Person" means an individual, partnership, society, association, joint stock company, corporation, public corporation or public authority, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise and any combination of the foregoing.

V. "Persons required to collect tax" or "persons required to collect any tax imposed by this chapter" means and includes every vendor of taxable tangible personal property or services. These terms shall also include any officer or employee of a corporation or of a dissolved corporation who as that officer or employee is under a duty to act for the corporation in complying with any requirement of this chapter and any member of a partnership.

VI. "Property and services the use of which is subject to tax" means and includes all property sold to a person within the state, whether or not the sale is made within the state, the use of which property is subject to tax under RSA 77-F:4 or will become subject to tax when such property is received by or comes into the possession or control of such person within the state.

VII. "Purchaser" means a person who purchases property or who receives services taxable under this chapter.

VIII. "Receipt" means the amount of the sales price of any property taxable under this chapter valued in money, whether received as money or otherwise, without any deduction for expenses or early payment discount, but excluding any amount for which credit is allowed by the vendor to the purchaser, and excluding any allowance in cash or by credit made upon the return of merchandise pursuant to warranty or the price of property returned by customers when the full price thereof is refunded either in cash or by credit, and excluding the price received for labor or services used in installing or applying to repairing the property sold, if separately charged or stated, and the cost of transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser provided those charges are separately stated and provided the transportation occurs by means of common carrier, contract carrier or the United States mails.

IX. "Retail sale" or "sold at retail" means the sale of tangible personal property to any person for any purpose, other than for resale, except resale as a casual sale. Sales of tangible personal property to all contractors, subcontractors or repairpersons of materials and supplies for use by them in erecting structures for others, or building on, or otherwise improving, altering, or repairing real property of others are deemed to be retail sales.

X. "Sales, selling or purchase" means any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor; except professional, insurance, personal service transactions, advertising services and computer and data processing services where tangible personal property is transferred as part

of such service transaction so long as no separate charge is made for the tangible personal property and so long as the value of the tangible personal property transferred is essentially an inconsequential element in relation to the value of the service transaction. The provisions of this paragraph shall be retroactive if to the benefit of the taxpayer.

XI. "Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses and shall include fuel, but shall not include rights and credits, insurance policies, bills of exchange, stocks and bonds, and similar evidences of indebtedness or ownership. Tangible personal property shall also include electricity unless RSA 83-E, the electricity consumption tax, is in effect.

XII. "Use" means the exercise of any right or power over tangible personal property by the purchaser thereof and includes, but is not limited to, the receiving, storage or any keeping or retention for any length of time, withdrawal from storage, any installation, any affixation to real or personal property, or any consumption of that property.

XIII. "Vendor" means and includes:

(a) A person making sales of tangible personal property or services, the receipts from which are taxed by this chapter;

(b) A person maintaining a place of business in the state and making sales, whether at that place or business or elsewhere, to persons within the state of tangible personal property or services, the use of which is taxed by this chapter;

(c) A person who solicits business either by employees, independent contractors, agents or other representatives or by distribution of catalogs or other advertising matter and by reason thereof makes sales to persons within the state of tangible personal property or services, the use of which is taxed by this chapter;

(d) Any other person making sales to persons within the state of tangible personal property or services, the use of which is taxed by this chapter, who may be authorized by the commissioner to collect the tax imposed by this chapter; and

(e) The state of New Hampshire or any of its agencies, instrumentalities, public authorities, public corporations, including a public corporation created pursuant to agreement or compact with another state, or political subdivision when that entity sells services or property of a kind ordinarily sold by private persons.

77-F:2 Imposition of Sales Tax. Except as otherwise provided in this chapter, there shall be paid a tax of 4 percent upon the receipts from the sale of tangible personal property purchased at retail in this state.

77-F:3 Tax Bracket Schedule.

I. For the purpose of adding and collecting the tax imposed by RSA 77-F:2, or an amount equal as nearly as possible or practicable to the average equivalent thereof, to be reimbursed to the vendor by the purchaser, the following formula shall be in force and effect as follows:

<u>Amount of Sale</u>	<u>Amount of Tax</u>
0.01 - 0.50	.02
0.51 - 1.00	.04

II. In addition to a tax of .04 on each full dollar, a tax shall be collected on each part of a dollar in excess of a full dollar in accordance with the following formula:

0.01 - 0.50	.02
0.51 - 1.00	.04

III. When several taxable articles are purchased together at the same time, the tax shall be computed on the total amount of the purchase of several taxable items.

77-F:4 Imposition of Compensating Use Tax. Unless property has already been or will be subject to the purchase tax under RSA 77-F:2, there is imposed on every person a use tax at the rate of 4 percent for the use within this state, except as otherwise exempted under this chapter:

I. Of any tangible personal property purchased at retail; and

II. Of any tangible personal property manufactured, processed or assembled by the user, if items of the same kind of tangible personal property are offered for sale by the user in the regular course of business, but the mere storage, keeping, retention or withdrawal from storage of tangible personal property or the use for demonstrational or instructional purposes of tangible personal property by the person who manufactured, processed or assembled such property shall not be deemed a taxable use by such person.

77-F:5 Administration; Rulemaking. In addition to other powers granted to the commissioner in this chapter and in RSA 21-J, the commissioner shall:

I. Collect the taxes, interest, additions to tax, and penalties imposed under this chapter and RSA 21-J.

II. Adopt rules, pursuant to RSA 541-A, relative to:

(a) The administration of the sales and use tax.

(b) The recovery of any tax, interest on tax, additions to tax, or the penalties imposed by RSA 77-F or RSA 21-J.

(c) The form of any returns, certificates and documents and the data which they must contain for the correct determination on computation of receipts and the tax assessed thereon.

III. Require any person required to collect taxes to keep detailed records of all receipts, received, charged or accrued, including those claimed to be nontaxable, and also of the nature, type, value, and amount of all purchases, sales, and other facts relevant in determining the amount of tax due and to furnish that information upon request to the commissioner.

IV. Publish and maintain, as the commissioner deems necessary, lists of specific items of tangible personal property which are found to be exempt from tax under RSA 77-F:2.

77-F:6 Liability for Tax. Every person required to collect any tax imposed by this chapter shall be personally liable for the tax imposed, collected or required to be collected, under this chapter. That person shall have the same rights in collecting the tax from the purchaser or regarding nonpayment of the tax by the purchaser as if the tax were a part of the purchase price of the property, and payable at the same time; provided, however, that the commissioner shall be joined as a party in any action or proceeding brought to collect the tax.

77-F:7 Principal and Agent; Joint Liability. When, in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to treat any salesperson, representative, peddler, or canvasser as the agent of the vendor, distributor, supervisor, or employer under whom the person operates or from whom the person obtains tangible personal property sold by the person or for whom the person solicits business, the commissioner may, in the commissioner's discretion, treat such agent as the vendor jointly responsible with the principal, distributor, supervisor, or employer for the collection and payment of the tax.

77-F:8 Payment and Return by Purchaser.

I. Where any purchaser has failed to pay a tax imposed by this chapter to the person required to collect the same, then in addition to all



other rights, obligations and remedies provided, the tax shall be payable by the purchaser directly to the commissioner and it shall be the duty of the purchaser to file a return with the commissioner and to pay the tax to the commissioner within 20 days of the date the tax was required to be paid.

II. The commissioner may, whenever the commissioner deems it necessary for the proper enforcement of this chapter, provide by rule that purchasers shall file returns and pay directly to the commissioner any tax herein imposed, at such times as returns are required to be filed and paid by persons required to collect the tax.

77-F:9 Transfers not in Course of Business; Notice; Lien.

I. Whenever a person required to collect the tax shall make a sale, transfer, or assignment in bulk of any part or the whole of such person's business assets, otherwise than in the ordinary course of business, the purchaser, transferee or assignee shall, at least 10 days before taking possession of the subject of the sale, transfer or assignment, or payment therefor, notify the commissioner by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferer or assignor, has represented, to, or informed the purchaser, transferee or assignee that any tax is owed pursuant to this chapter, and whether or not the purchaser, transferee, or assignee has knowledge that the taxes are owing, and whether any taxes are in fact owing.

II. Whenever the purchaser, transferee or assignee shall fail to give notice to the commissioner as required by paragraph I, or whenever the commissioner shall inform the purchaser, transferee or assignee that a possible claim for the tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferer or assignor shall be subject to first priority right and lien for any taxes theretofore or thereafter determined to be due from the seller, transferer or assignor to the state, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferer or assignor any sums of money, property or choses in action to the extent of the amount of the state's claim. For failure to comply with this section the purchaser, transferee or assignee shall be personally liable for the payment to the state of any taxes theretofore or thereafter determined to be due to the state from the seller, transferer or assignor, and the liability may be assessed and enforced in the same manner as the liability for tax under this chapter.

77-F:10 Registration.

I. On or before September 1, 1999, or in the case of persons commencing business or opening new places of business after that date, within 3 days after the commencement or opening, every person required to collect any tax imposed by this chapter and every person purchasing tangible personal property for resale shall file with the commissioner a certificate of registration in a form prescribed by the commissioner. The commissioner shall issue, without charge, to each registrant a certificate of authority empowering the registrant to collect the tax. Each certificate shall state the place of business to which it is applicable. The certificate of authority shall be prominently displayed in the place of business of the registrant. A registrant who has no regular place of doing business shall attach the certificate to the registrant's cart, stand, truck or other merchandising device, or carry it on the registrant's person. The certificate shall be nonassignable and nontransferable and shall be surrendered to the commissioner immediately upon the registrant's ceasing to do business at the place named.

II. Any person who is not otherwise required to collect any tax imposed by this chapter and who makes sales to persons within the state of tangible personal property or services, the use of which is subject to tax under this chapter, may, if such person so elects, file a certificate of registration with the commissioner who may, in the commissioner's discretion and subject to such conditions as the commissioner may impose, issue to such person a certificate of authority to collect the compensating use tax imposed by this chapter.

77-F:11 Restrictions on Advertising.

I. No person required to collect any tax imposed by this chapter shall advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the tax is not considered as an element in the price payable by the customer, or that such person will pay the tax, that the tax will not be separately charged and stated to the customer, or that the tax will be refunded to the customer.

II. Upon written application duly made and proof duly presented to the satisfaction of the commissioner showing that in the vendor's particular business it would be impractical for such vendor to separately charge the tax to the customer, the commissioner may waive the application of the requirement herein as to such vendor.

III. Whenever reference is made in placards or advertisements or in any other publications to any tax imposed by this chapter, the reference shall be in substantially the following form: "sales and use tax"; except that in any bill, receipt, statement or other evidence or memorandum of sale issued or employed by a person required to collect tax, if the tax is required to be stated separately thereon as provided in RSA 77-F:23, the word "tax" shall suffice.

77-F:12 Recordkeeping. Every person required to collect any tax imposed by this chapter shall keep records of every sale and of all amounts paid or charged or due thereon and of the tax payable thereon, in such form as the commissioner shall require. These records shall include a true copy of each sales slip, invoice, receipt, statement or memorandum upon which RSA 77-F:23 requires that the tax be stated separately. The records shall be available for inspection and examination at any time upon demand by the commissioner or the commissioner's duly authorized agent or employee and shall be preserved for a period of 3 years, except that the commissioner may consent to their destruction within that period or may require that they be kept longer.

Exemptions

77-F:13 Sales not Covered. Receipts from the following shall be exempt from the tax on retail purchases imposed under RSA 77-F:2 and the use tax imposed under RSA 77-F:4:

I. Sales not within the taxing power of this state under the Constitution of the United States.

II. All health care items, including, but not limited to, purchases of medicines and drugs sold pursuant to a doctor's prescription for human use, oxygen for medical purposes, blood, blood plasma, artificial components of the human body, prosthetic devices, medicinal appliances, corrective appliances, corrective optical devices, dentures, hearing aids, seeing eye dogs, crutches, wheelchairs, hospital type beds, medical and dental devices and instruments, medical and dental equipment (including component parts thereof) and supplies used in treatment intended to alleviate human suffering or to correct, in whole or in part, human physical disabilities.

III. Casual sales.

IV. Purchases of all alcoholic beverages.

V. Purchases of motor fuels; taxed or exempted under RSA 260, provided, however, that jet fuel shall be taxed under this chapter.

VI. Purchases of tobacco products taxed or exempted under RSA 78.

VII. Rents for rooms, taxed under RSA 78-A and the transactions exempted therefrom.

VIII. Purchases of meals, taxed or exempted under RSA 78-A.

IX. Purchases of food, food stamps, purchases made with food stamps, food products and beverages sold for human consumption off the premises where sold.

X. Purchases of equipment, supplies, and building materials made directly to volunteer fire departments, volunteer ambulance companies, or volunteer rescue squads for official use by the volunteer organizations.

XI. Funeral charges, including, but not limited to, sales of tangible personal property such as caskets, vaults, boxes, clothing, crematory urns, and other such funeral furnishings as are necessary incidents of the funeral, and other items sold as an accommodation rather than as an integral part of the funeral service or preparation therefor.

XII. Tangible personal property purchased for use or consumption directly and exclusively, except for isolated or occasional uses, in commercial, industrial or agricultural research or development in the experimental or laboratory sense. It shall be rebuttably presumed that uses are not isolated or occasional if they total more than 4 percent of the time the machinery or equipment is operated. Such research or development shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising promotions, or research in connection with literary, historical or similar projects.

XIII. Purchases of electricity, oil, gas and other fuels used in a residence for all domestic uses including heating, and sales of such fuels when used by businesses and farms for farming and business purposes.

XIV. All vessels over 50 tons.

XV. Home and household items, including but not limited to, firewood and kindling, propane gas for grills and stoves, fertilizer, fungicides, insecticides, cloth diapers, which are reusable and recyclable, plants and seeds which produce food for human consumption, and car seats.

XVI. All items of clothing and shoes and fabric goods under \$250 and fire, police, waitress and nurse work uniforms and footwear.

XVII. Purchases of bibles, prayer books, missals, and other religious texts.

77-F:14 Transactions not Covered. This chapter shall not cover the following transactions:

I. Private yard sales which consist of the casual sale of tangible personal property.

II. The transfer of tangible personal property to a corporation solely in consideration for the issuance of its stock, pursuant to a merger or consolidation effected under the laws of New Hampshire or any other jurisdiction.

III. The distribution of property by a corporation to its stockholders as a liquidating dividend.

IV. The distribution of property by a partnership to its partners in whole or partial liquidation.

V. The distribution of property by a limited liability company to its members in whole or partial liquidation.

VI. The transfer of property to a corporation upon its organization in consideration for the issuance of its stock.



VII. The contribution of property to a partnership in consideration for a partnership interest.

VIII. The contribution of property to a limited liability company in consideration for a membership interest.

IX. The sale of tangible personal property where the purpose of the vendee is to hold the thing transferred as security for the performance of an obligation of the vendor.

X. The sawing of lumber owned by the person requesting the sawing or such person's agent.

77-F:15 Organizations not Covered. Any purchase or service charged by or to any of the following or any use by any of the following are not subject to the sales and use taxes imposed under this chapter:

I. The state of New Hampshire, or any of its agencies, instrumentalities, public authorities, public corporations, including a public corporation created pursuant to agreement or compact with another state, or political subdivisions when it is the purchaser, user or consumer, or when it is a vendor of services or property of a kind not ordinarily sold by private persons.

II. The United States of America, any of its agencies and instrumentalities, insofar as it is immune from taxation when it is the purchaser, user or consumer, or when it sells services or property of a kind not ordinarily sold by private persons.

III. Organizations which qualify for exempt status under the provisions of Section 501(c)(3) of the United States Internal Revenue Code, as the same may be amended or redesignated, excepting sales, storage or use in activities which are mainly commercial enterprises; provided, however:

(a) That the organization first shall have obtained a certificate from the commissioner stating that it is entitled to the exemption;

(b) That the sale or service or use is for the exempt purpose of such organization; and

(c) That the vendor keeps a record of the purchase price of each such separate purchase, the name of the purchaser, the date of each separate purchase, and the number of the certificate.

IV. Purchases of building materials and supplies to be used in the construction, reconstruction, alteration, remodeling or repair of:

(a) Any building structure or other public work owned by or held in trust for the benefit of any governmental body or agency mentioned in paragraphs I and II of this section and used exclusively for public purposes;

(b) Any building or structure owned by or held in trust for the benefit of any organization described in paragraph III and used exclusively for the purposes upon which its exempt status is based; and

(c) Any building or housing project subject to the provisions of RSA 204-C, provided, however, that the governmental body or agency, the organization, or person has first obtained a certificate from the commissioner stating that it is entitled to the exemption and the vendor keeps a record of the purchase price of each separate purchase, the name of the purchaser, the date of each separate purchase, and the number of the certificate. In this paragraph, the words "building materials and supplies" shall include all materials and supplies consumed, employed or expended in the construction, reconstruction, alteration, remodeling, or repair of any building, structure, or other public work as well as the materials and supplies physically incorporated therein.

V. Organizations which qualify for exempt status under the provisions of Section 501(c)(4)-(13) and (19), and political organizations as

defined in Section 527(e) of the United States Internal Revenue Code, as the same may be amended or redesignated, shall not be exempt from taxation of the purchase or use of tangible personal property as defined in RSA 77-F:1.

**77-F:16 Property Exempt From Use Tax.**

I. The following uses of property are not subject to the compensating use tax imposed under this chapter:

(a) Property used by the purchaser in this state prior to July 1, 1999.

(b) Property purchased by the user while a nonresident of this state, except in the case of tangible personal property which the user, in the performance of a contract, incorporates into real property located in the state and except in the case of vessels under 50 tons and used in the waters of this state for at least 30 days.

(c) Property or services to the extent that a retail sales or use tax was legally due and paid thereon, without any right to a refund or credit thereof, to any other state or jurisdiction within any other state but only when it is shown that the other state or jurisdiction allows a corresponding exemption with respect to the purchase or use of tangible personal property or services upon which such a purchase tax or compensating use tax was paid to this state. To the extent that the tax imposed by this chapter is at a higher rate than the rate of tax in the first taxing jurisdiction, this exemption shall be inapplicable and the tax imposed by RSA 77-F:4 shall apply to the extent of the difference in the rates.

(d) Property withdrawn from inventory for the purpose of donating such property to an entity described in RSA 77-F:15, I, II, or III.

II. A person while engaged in any manner in carrying on in this state any employment, trade, business or profession, not entirely in interstate or foreign commerce, shall not be deemed a nonresident with respect to the use in this state of property in that employment, trade, business or profession.

**77-F:17 Certificate or Affidavit of Exemption.** Unless a vendor shall have taken from the purchaser a certificate, signed by the purchaser and bearing the purchaser's name and address and the number of the purchaser's registration certificate, to the effect that the property was purchased for resale or the purchaser prior to taking delivery, furnishes to the vendor any affidavit, statement or additional evidence, documentary or otherwise, which the commissioner may require demonstrating that the purchaser is an exempt organization described in RSA 77-F:15, the purchase shall be deemed a taxable purchase at retail. Provided, however, the commissioner may authorize a purchaser, who acquires tangible personal property or services under circumstances which make it impossible at the time of acquisition to determine the manner in which the tangible personal property or services will be used, to pay the tax directly to the commissioner and waive the collection of the tax by the vendor. Provided, further, the commissioner shall authorize any contractor, subcontractor or repairperson who acquires tangible personal property consisting of materials and supplies for use in erecting structures for others, or building on, or otherwise improving, altering, or repairing real property of others, to pay the tax directly to the commissioner and waive the collection of the tax by the vendor. No such authority shall be granted or exercised except upon application to the commissioner and the issuance by the commissioner of a direct payment permit. If a direct payment permit is granted, its use shall be subject to conditions specified by the commissioner and the payment of tax on all acquisitions pursuant to the permit shall be made directly to the commissioner by the permit holder.

### 77-F:18 Computing Receipts and Consideration.

I. The retail purchase tax imposed under RSA 77-F:2 and the compensating use tax imposed under RSA 77-F:4 when computed in respect to tangible personal property wherever manufactured, processed or assembled and used by such manufacturer, processor or assembler in the regular course of business within the state, shall be based on the price at which items of the same kind of tangible personal property are offered for sale by such manufacturer, processor or assembler.

II. Tangible personal property which has been purchased by a resident of the state outside of this state for use outside of this state and subsequently becomes subject to the compensating use tax imposed under this chapter, shall be taxed on the basis of the purchase price of the property, provided however:

(a) That where a taxpayer affirmatively shows that the property was used outside the state by the taxpayer for more than 6 months prior to its use within this state, the property shall be taxed on the basis of current market value of the property at the time of its first use within this state but the value of the property, for compensating use tax purposes, may not exceed its cost.

(b) That the compensating use tax on the tangible personal property brought into this state, other than for complete consumption or for incorporation into real property located in this state, and used in the performance of a contract or subcontract within this state by a purchaser or user for a period of less than 6 months may be based, at the option of the taxpayer, on the fair rental value of the property for the period of use within this state.

III. For purposes of RSA 77-F:4, I the tax shall be at the rate of 4 percent of the consideration given or contracted to be given for the property or for the use of the property adjusted in the same manner as is the sales price under the purchase tax to arrive at "receipts."

IV. For purposes of RSA 77-F:4, II the tax shall be at the rate of 4 percent of the price at which items of the same kind of tangible personal property are offered for sale by the user.

### 77-F:19 Returns.

I. Every person required to collect or pay tax under this chapter shall on or before the twenty-eighth day of February and the thirtieth day of each other month make and file a return for the preceding month with the commissioner. The return of a vendor of tangible personal property shall show such vendor's receipts from sales and also the aggregate value of tangible personal property sold, the use of which is subject to tax under this chapter.

II. The commissioner may extend, for cause shown, the time of filing any return for a period not exceeding 3 months on such terms and conditions as the commissioner may require.

III. The commissioner may permit or require returns to be made covering other periods upon such dates as the commissioner specifies. In addition, the commissioner may require payment of tax liability at such intervals and based upon such classifications as the commissioner may designate. In prescribing the other periods to be covered by the return or intervals or classifications for payment of tax liability, the commissioner may take into account the dollar volume of tax involved as well as the need for insuring the prompt and orderly collection of the taxes imposed.

IV. The commissioner may require amended returns to be filed within 20 days after notice and to contain the information specified in the notice.



**77-F:20 Payment of Tax.**

I. Every person required to file a return under this chapter shall, at the time of filing the return, pay to the commissioner the taxes imposed by this chapter as well as all other moneys collected by such person under this chapter; provided, however, that every person who collects the tax from purchasers of taxable items according to the tax bracket schedule of RSA 77-F:3 shall be allowed to retain, as partial compensation for services rendered to the state of New Hampshire in collecting the tax, any amount lawfully collected by such person in excess of the tax imposed by this chapter.

II. All the taxes for the period for which a return is required to be filed or for such lesser interval as shall have been designated by the commissioner, shall be due and payable to the commissioner on the date established for the filing of the return for that period, or on the date for such lesser interval as the commissioner has designated, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of receipts, or the value of property or services sold or purchased or the taxes due thereon.

**77-F:21 Surety Bonds.**

I. When the commissioner deems it necessary to protect the revenues to be obtained under this chapter, the commissioner may, after notice and hearing, require any vendor required to collect the tax imposed by this chapter to file with the commissioner a bond issued by a surety company authorized by the New Hampshire insurance department to do business in this state, in an amount fixed by the commissioner, to secure the payment of any tax, interest or penalties due, or which may become due. The vendor shall file a bond within 10 days after the department has issued and mailed such notice. Surety bonds may be required in situations such as, but not limited to, failure to file returns, failure to make payments with returns at the time required by law, tender by a vendor of checks returned for insufficient funds, failure to pay interest and penalties assessed, vendors who are itinerant, transient or temporary, and any other situation which, in the discretion of the commissioner, renders the collection of the tax in jeopardy.

II. The surety on such bond shall be discharged from the liability accruing on the bond after the expiration of 60 days from the date on which the surety shall have lodged with the department a written request to be so discharged; but such request shall not discharge such surety from any liability already accrued or which shall accrue before the expiration of said 60-day period. The duration of surety bonds shall be for one year only, unless the requirement is cancelled or revised by the commissioner before the expiration of the one-year period.

III. In lieu of a bond, cash in an amount prescribed by the commissioner may be deposited with the state treasurer who may, at any time, upon instructions from the commissioner and without notice to the depositor, apply the cash deposited to any tax or interest or penalties due. Cash deposited in lieu of a surety bond shall not earn interest.

IV. Failure to comply with the provisions of this section shall result in the suspension of the vendor's license, as provided in RSA 77-F:27.

**77-F:22 Determination of Tax.**

I. If a return required by this chapter is not filed, or if a return when filed, is incorrect or insufficient, the amount of tax due shall be determined and assessed by the commissioner from any information available. If necessary, the tax may be estimated on the basis of external indices, such as stock on hand, purchases, rental paid, location, scale of rents or charges, comparable rents or charges, type of accommodations and service, number of employees or other factors.

II. The commissioner may provide by rule for the exclusion from taxable receipts of amounts representing sales where the contract of sale has been cancelled, the property returned or the receipt or charge has been ascertained to be uncollectable or, in the case the tax has been paid upon that receipt or charge, for refund or credit of the tax so paid.

77-F:23 Collection of Tax From Purchaser. Every person required to collect the tax shall collect the tax from the purchaser when collecting the price to which it applies. If the purchaser is given any sales slip, invoice, receipt or other statement or memorandum of the price paid or payable, the tax shall be stated, charged and shown separately on the first of the documents given to him. The tax shall be paid to the person required to collect it as trustee for and on account of the state.

77-F:24 Deferred Payment Purchases. The commissioner may provide that the tax upon receipts from purchases on the installment plan, seasonal purchases, or deferred payment purchases may be paid on the amount of each deferred payment and upon the date when the payment is received.

77-F:25 Refunds.

I. Claims for refund or credit may be made by a customer who has actually paid the tax or by a person required to collect the tax, who has collected and paid over the tax to the commissioner, provided that the claim is timely made in accordance with RSA 21-J:28-a and RSA 21-J:29. No actual refund of moneys shall be made to a person until such person establishes to the satisfaction of the commissioner, under such rules as the commissioner may adopt, that such person has repaid to the customer the amount for which the application for refund is made. The commissioner may, in lieu of any refund, allow credit on payments due from the claimant.

II. If the commissioner determines, on a petition for refund or otherwise, that a person has paid an amount of tax under this chapter which, as of the date of the determination, exceeds the amount of tax liability owing from the person to the state, with respect to the current and all preceding taxable periods, under any provision of this title, the commissioner shall forthwith refund the excess amount to the person together with interest as provided in RSA 21-J:28.

77-F:26 Proceedings to Recover Tax.

I. The commissioner may institute actions in the name of the state to recover any tax, interest on tax, additions to tax, or penalties imposed by this chapter.

II. In the collection of the tax imposed by this chapter, the commissioner may use all of the powers granted to tax collectors under RSA 80 for the collection of taxes, except that the tax imposed by this chapter shall not take precedence over prior recorded mortgages. The commissioner shall also have all of the duties imposed upon the tax collectors by RSA 80 that are applicable to the commissioner. The provisions of RSA 80:26 apply to the sale of land for the payment of taxes due under this chapter, and the state treasurer is authorized to purchase the land for the state. If the state purchases the land, the state treasurer shall certify the purchase to the governor, and the governor shall draw a warrant for the purchase price out of any money in the treasury not otherwise appropriated.

77-F:27 Suspension or Revocation of Certificates; Appeal.

I. The commissioner may, after notice and hearing, suspend or revoke the certificate of registration of any person required to collect the tax or may refuse to issue or renew any registration for failure to comply with this chapter or with any pertinent rules adopted hereunder.

II. Any person required to collect the tax aggrieved by a suspension, revocation, or refusal may appeal therefrom, in the same manner as provided in RSA 21-J:28-b for appeal for redetermination or reconsideration of assessments, within 10 days after written notice of the suspension, revocation or refusal has been mailed or delivered to such person.

III. If the appealing person required to collect the tax files a bond running to the state as provided in RSA 77-F:22, then the suspension or revocation shall be inoperative during the appeal.

77-F:28 Liens. If any person required to pay or collect and transmit a tax under this chapter neglects or refuses to pay the same after demand, the amount, together with all penalties and interest provided for in this chapter and together with any costs that may accrue in addition thereto, shall be a lien in favor of the state of New Hampshire upon all property and rights to property, whether real or personal, belonging to such person. Such lien shall arise at the time demand is made by the commissioner of taxes and shall continue until the liability for such sum with interest and costs is satisfied or becomes unenforceable. No lien upon real estate for taxes imposed by this chapter is valid and binding against any person other than the taxpayer until notice of such lien stating the name and address of the taxpayer and the amount of the tax due shall have been filed and recorded in the registry of deeds in the grantor index in the county in which such real estate is located. Notwithstanding the provisions of any other law, the lien shall continue and shall be valid and binding until the liability for the sum, with interest and costs, is satisfied or becomes unenforceable.

77-F:29 Disposition of Tax. All revenues collected under this chapter shall be deposited in the education trust fund established in RSA 198:39.

**Question is on the amendment ( see above).**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Trombly.**

**The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Wheeler.**

**The following Senators voted No: Below, McCarley, Trombly, Disnard, Roberge, Blaisdell, Fernald, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Klemm, Hollingworth, Cohen.**

**Yeas: 5 - Nays: 19**

**Motion failed.**

**Senator Gordon withdrew the second part of the amendment.**

**Recess.**

**Out of Recess.**

**Senator D'Allesandro offered a floor amendment.**

**1999-0559s**

**09/10**

### **Floor Amendment to HB 112-FN-A-LOCAL**

**Amend the title of the bill by replacing it with the following:**

**AN ACT** relative to state taxes and other sources of revenue for funding an adequate education; authorizing electronic games of chance at racetracks, grand hotels, and resort hotels; relative to establishing the cost of an adequate education, and relative



to creating a commission to study the methodology used in establishing the cost of an adequate education, and making an appropriation therefor.

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose; Intent.

I. In December 1997, the New Hampshire supreme court in the Claremont II decision ruled that it is the state's duty to define and provide all New Hampshire's public school students with an adequate education, and further that the manner of raising revenue to pay for an adequate education be through a system of taxation that is proportional in substance and just and reasonable in application.

II. Through the passage of House Bill 1075, the general court defined an adequate education. The definition grew out of work undertaken in the early 1990's to develop curriculum frameworks which specifically address the importance of establishing and measuring what all New Hampshire students should know and be able to do. The curriculum frameworks were developed with the widespread participation of educators, business people, government officials, community representatives, and parents. They have evolved into a critical component of providing a quality public education to New Hampshire students.

III. The New Hampshire educational improvement and assessment program ("NHEIAP") tests were developed in conjunction with the curriculum frameworks as a measure of student performance. The general court therefore finds that the NHEIAP tests are a measure of student performance and can be used to develop and implement effective methods for assessing learning and its application. The general court further finds that in determining the cost of a constitutionally adequate education, performance based outcome criteria, specifically the NHEIAP test scores, can be used to identify school districts that are delivering such a constitutionally adequate education. The NHEIAP tests are comprehensive and difficult. Students taking these tests in the third, sixth, and tenth grades are scored on 4 levels of performance: novice, basic, proficient, and advanced. The general court finds that students who score in the basic, proficient, and advanced levels on these state tests are making progress toward achieving the goals set forth in House Bill 1075. Furthermore, each school district shall receive 70 percent of its total transportation costs and shall receive special education costs as defined in this act.

IV. The general court recognizes the inherent imprecision, subjectivity, and difficulty in determining the cost of an adequate education. Numerous complex financial, budgetary, administrative, and educational elements must be in place in order for the state to fully meet the mandates of Claremont II. Those mandates coupled with the policy of the state recognize that an adequate public education is not a static concept removed from the demands of an evolving world. An adequate education transcends mere competence in the reading, writing and arithmetic. Such an education shall provide all students with a meaningful opportunity to acquire the knowledge and skills necessary to prepare them for successful participation in the social, economic, scientific, technological, and civic realities of society, now and in the years to come. To ensure these fundamental rights, as recognized by the court, thoughtful and deliberate planning with the involvement of many sources of expertise as well as phased-in implementation of the major elements over time is required. Concomitantly, such planning and implementation is required in order to ensure:

(a) That the educational needs of all children are met, including regular education students, students with special needs such as students with disabilities, students who are economically disadvantaged or are otherwise educationally at risk, or those who are intellectually gifted;

(b) That the needed changes are long-term in nature, truly embedded on the local and state level, gain acceptance and are both cost and educationally effective, and to those ends address underlying or systemic issues; and

(c) Compliance with all applicable federal laws.

V. Under Claremont II, and as recently reaffirmed by the court in its November 1998 opinion, a funding system for a constitutionally adequate education must be in place for the beginning of the 1999 tax year which begins on April 1, 1999.

VI. Therefore, in order to meet the aforementioned competing requirements of a long-range, carefully planned, and phased-in solution and to address the need to have an acceptable system in place by April 1, 1999, this act establishes a special commission to develop long-term plans and solutions to comprehensively and permanently meet constitutional mandates.

2 Cigarette Tax. Amend RSA 78:7 to read as follows:

78:7 Tax Imposed. A tax upon the retail consumer is hereby imposed at the rate of [37] 62 cents for each package containing 20 cigarettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes, on all tobacco products sold at retail in this state. The payment of the tax shall be evidenced by affixing stamps to the smallest packages containing the tobacco products in which such products usually are sold at retail. The word "package" as used in this section shall not include individual cigarettes. No tax is imposed on any transactions, the taxation of which by this state is prohibited by the Constitution of the United States.

3 New Subdivision; Disposition of Tobacco Tax Revenues; Special Fund. Amend RSA 78 by inserting after section 31 the following new subdivision:

#### Disposition of Revenues

78:32 Disposition of Revenues. Three million dollars of the gross revenues collected under this chapter shall be deposited at the end of each fiscal year beginning June 30, 2000 in the tobacco use prevention and cessation fund established in RSA 78:33.

78:33 Tobacco Use Prevention and Cessation Fund. There is established within the office of the state treasurer a tobacco use prevention and cessation fund. Money from this fund shall be continually appropriated to the department of health and human services for tobacco use prevention and cessation programs and shall be allocated as follows:

	<u>Percentage</u>	<u>Amount</u>
I. Tobacco use prevention community programs and grants	25	\$750,000
II. Tobacco use prevention school programs and grants	18	\$540,000
III. Tobacco use prevention state-wide programs and grants	15	\$450,000
IV. Tobacco use cessation programs	15	\$450,000
V. Tobacco use prevention and cessation counter marketing	18	\$540,000
VI. Evaluation	5	\$150,000
VII. Administration and enforcement	4	\$120,000

4 New Subparagraph; Special Fund. Amend RSA 6:12, I by inserting after subparagraph (vvv) the following new subparagraph:

(www) Three million dollars of the annual gross revenues of the tobacco tax collected under RSA 78, which shall be credited as provided in RSA 78:32 to the tobacco use prevention and cessation fund established under RSA 78:33.

5 Applicability. Section 2 of this act shall apply to all persons licensed under RSA 78:2. Such persons shall inventory all taxable tobacco products in their possession and file a report of such inventory with the department of revenue administration on a form prescribed by the commissioner within 20 days after the effective date of this act. The tax rate effective April 1, 1999, shall apply to such inventory and the difference, if any, in the amount paid previously on such inventory and the current effective rate of tax shall be paid with the inventory form. The inventory form shall be treated as a tax return for the purpose of computing penalties under RSA 21-J.

6 Gender Reference Change. Amend the introductory paragraph of RSA 21-J:3 to read as follows:

In addition to the powers, duties, and functions otherwise vested by law, including RSA 21-G, in the commissioner of the department of revenue administration, ~~he~~ **the commissioner** shall:

7 Duties of Commissioner. Amend RSA 21-J:3, XIII to read as follows:

XIII. Equalize annually the valuation of the property in the several towns, cities, and unincorporated places in the state, ***including the value of property exempt pursuant to RSA 72:37-b, 72:62, 72:66, and 72:70***, by adding to or deducting from the aggregate valuation of the property in towns, cities, and unincorporated places such sums as will bring such valuations to the true and market value of the property, including the equalized value of property formerly taxed pursuant to the provisions of RSA 72:7; 72:15, I, V, VII, VIII, IX, X, and XI; 72:16; 72:17; 73:26; 73:27; and 73:11 through 16 inclusive, which were relieved from taxation by the laws of 1970, 5:3; 5:8; 57:12; and 57:15, the equalized valuation of which is to be determined by the amount of revenue returned in such year in accordance with RSA 31-A, and by making such adjustments in the value of other property from which the towns, cities, and unincorporated places receive taxes ***or payments in lieu of taxes*** as may be equitable and just, so that any public taxes that may be apportioned among them shall be equal and just. ***In carrying out the duty to equalize the valuation of property, the commissioner shall follow the procedures set forth in RSA 21-J:9-a.***

8 Duties of the Commissioner. Amend RSA 21-J:3, XV to read as follows:

XV. Establish and approve tax rates as required by law ***including the uniform education tax rate.***

9 New Paragraph; Duties of Commissioner. Amend RSA 21-J:3 by inserting after paragraph XXIV the following new paragraph:

XXV. Petition the board of tax and land appeals to issue an order for reassessment of property pursuant to the board's powers under RSA 71-B:16-19 whenever the valuation of property for equalization purposes in a particular city, town, or unincorporated place is disproportional to the valuation for equalization purposes in other cities, towns, or unincorporated places in the state.

10 Division of Property Appraisal; Department of Revenue Administration. RSA 21-J:9 is repealed and reenacted to read as follows:

21-J:9 Division of Property Appraisal. There is established within the department the division of property appraisal, under the supervision of a classified director of property appraisal who shall be responsible for the following functions, in accordance with applicable laws:



I. Assisting and supervising municipalities and appraisers in appraisals and valuations as provided in RSA 21-J:10 and RSA 21-J:11.

II. Appraising state-owned forest and recreation land under RSA 227-H and RSA 216-A.

III. Annually determining the total equalized valuation of properties in the cities and towns and unincorporated places according to the requirements of RSA 21-J:9-a.

IV. Preparing a standard appraisal manual which may be used by assessing officials, and holding meetings throughout the state with such officials to instruct them in appraising property.

11 New Section; Equalization Procedure. Amend RSA 21-J by inserting after section 9 the following new section:

21-J:9-a Equalization Procedure. The following procedures shall apply in determining the equalization of property within the cities, towns, and unincorporated places as required by RSA 21-J:3, XIII:

I. The commissioner shall annually conduct a sales-assessment ratio study which shall include arm's length sales or transfers of property that occurred 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made.

II. In determining the arm's length sales or transfers that are included in the sales-assessment ratio study, the commissioner may use a randomly selected sample of such sales and transfers the size of which shall be determined by the total taxable parcels in the city, town, or unincorporated place.

III. If less than 2 percent of the total taxable parcels in a city, town, or unincorporated place has been transferred by an arm's length sale or transfer during the 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made or the commissioner determines the sales are not representative of the property within the municipality, the commissioner may choose one or more of the following options:

(a) Include appraisals of any of the taxable property of such city, town, or unincorporated place in the sales-assessment ratio study. Such appraisals shall be based on full and true market value pursuant to RSA 75:1 and shall be performed by department appraisers. The property to be appraised shall be selected by the commissioner.

(b) Consider recent equalization ratio activity in adjoining cities, towns, or unincorporated places.

(c) Include arm's length sales or transfers in the city, town, or unincorporated place, within 2-1/2 years preceding April 1 of the year preceding the tax year for which such equalization is made.

IV. The commissioner shall use the inventory of property transfers authorized by RSA 74:18 in determining the equalized value of property and may consider such other evidence as may be available to the commissioner on or before the time the final equalized value is determined.

12 Appraisals of Property for Ad Valorem Tax Purposes. RSA 21-J:11 is repealed and reenacted to read as follows:

21-J:11 Appraisals of Property For Ad Valorem Tax Purposes.

I. Every person, firm, or corporation intending to engage in the business of making appraisals on behalf of a municipality for tax assessment purposes in this state shall notify the commissioner of that intent in writing. No person, firm, or corporation engaged in the business of making appraisals of taxable property for municipalities and taxing districts shall enter into any contract or agreement with any town, city, or other governmental division without first submitting the proposed contract or agreement to the commissioner for examination

and approval and submitting to the commissioner evidence of financial responsibility and professional capability of personnel to be employed under the contract.

II. The commissioner, at no expense to the municipality, shall monitor appraisals of property and supervise appraisers as follows:

(a) Assure that appraisals comply with all applicable statutes and rules;

(b) Assure that appraisers are complying with the terms of any appraisal contract;

(c) Review the accuracy of appraisals by inspection, evaluation, and testing, in whole or in part, of data collected by the appraisers; and

(d) Report to the governing body on the progress and quality of the municipality's appraisal process.

III. The commissioner shall adopt rules under RSA 541-A relative to the provisions required of all contracts for appraisal services and the methodology for inspection, evaluation, and testing of data for the purposes of appraisal monitoring.

13 Reports Required. Amend the introductory paragraph of RSA 21-J:34 to read as follows:

The governing body of each city, town, unincorporated [~~town, unorganized~~] place, school district, and village district, and the clerk of each county convention shall submit to the commissioner of revenue administration the following reports necessary to compute and establish the ***uniform education property tax rate and the*** tax rate for each city, town, unincorporated [~~town, unorganized~~] place, school district, village district, and county. The commissioner shall adopt rules under RSA 541-A establishing the form and content of these reports:

14 New Paragraph; Reports Required. Amend RSA 21-J:34 by inserting after paragraph XIV the following new paragraph:

XV. A report filed by the assessing officials of each city, town, and unincorporated place shall certify sales-assessment information necessary for the department to conduct the annual sales-assessment ratio study required by RSA 21-J:9-a. This report shall be filed within 45 days after receipt from the department.

15 New Paragraph; Setting of Tax Rates by Commissioner. Amend RSA 21-J:35 by inserting after paragraph I the following new paragraph:

I-a. The commissioner shall set the uniform education property tax rate at \$6.25 on each \$1,000 of total equalized value of all property in the municipality as determined under RSA 21-J:3, XIII.

16 Revenue Sharing. Amend RSA 31-A:4, I to read as follows:

I. Its 1978 distribution under RSA 31-A plus its share under the equalized formula of an annual increase of 5 percent in the previous year's aggregate distribution, through the year 1981, excluding revenues derived from RSA 77-A:20. ***The amount of money which is removed from the formula for deposit in the education trust fund shall not affect the remaining municipal revenue sharing distribution. The same amount distributed to each municipality in fiscal year 1998, excluding the amount apportioned to the school district in the 1998 property tax calculations, shall be distributed to each municipality in fiscal year 1999 and each year thereafter until the legislature revises the formula or provides additional appropriations that will affect the distribution amount.***

17 Board of Tax and Land Appeals; Authority. Amend RSA 71-B:5, II to read as follows:

II.(a) To hear and determine ~~[any]~~ appeals **by municipalities** relating to the ~~[equalization of valuation performed]~~ **equalized valuation of property determined** by the commissioner of revenue administration pursuant to RSA 21-J:3, XIII. Any ~~[town]~~ **municipality** aggrieved by ~~[an]~~ **its** equalized valuation as determined by the commissioner of revenue administration must appeal to the board in writing within 30 days of ~~[the town's notification]~~ **notice of [the] its final** equalized valuation by the commissioner. **The board shall hear and make a final ruling on such appeal within 45 days of its receipt by the board. The board's decision on such appeal shall be final pending a decision by the supreme court of any appeal by any municipality of a board's decision. The supreme court shall give any appeal under this section priority in the court calendar.**

(b) Decisions by the supreme court on appeals made under subparagraph (a) that are issued prior to September 15 shall be used by the commissioner of revenue administration in determining the taxes to be raised by each municipality in the tax year commencing April 1 of the succeeding year.

(c) Decisions by the supreme court on appeals made under subparagraph (a) that are issued after September 15 shall be used by the commissioner of revenue administration in determining the taxes to be raised in the tax year commencing April 1 of the second succeeding year. Any adjustments that need to be made to a municipality's tax rate based on a decision by the supreme court under this subparagraph shall be made by the commissioner of revenue administration in the tax year commencing April 1 of the second succeeding year.

18 New Paragraph; Order for Reassessment. Amend RSA 71-B:16, IV to read as follows:

IV. When a complaint is filed with the board alleging that all of the taxable real estate or taxable property in a taxing district should be reassessed or newly assessed for any reason, provided that such complaint must be signed by at least 50 property taxpayers or 1/3 of the property taxpayers in the taxing district, whichever is less[-]; or

**V. When the commissioner of revenue administration files a petition with it pursuant to RSA 21-J:3, XXV.**

19 New Section; Inventory of Property Transfers. Amend RSA 74 by inserting after section 17 the following new section:

74:18 Inventory of Property Transfers.

I. In order to properly equalize the value of property under RSA 21-J:3, XIII, an inventory of property transfers shall be filed with the department of revenue administration and with the municipality where the property is located for each transfer of real estate or interest in real estate. Each form may include the following information:

(a) The buyer and seller's names and post transaction addresses and the name and address of a contact person if the buyer or seller is a trust or corporation.

(b) A description of the exact location of the property by town, street, and the assessor's map, lot, and block number.

(c) The acreage included in the sale.

(d) An accurate description of the property included in the sale, the neighborhood where the property is located, and the type and style of the property sold.

(e) The buyer's ownership interest in the property.

(f) The sale price, date of transfer, and the amount mortgaged.

(g) The description of the type of transfer that has taken place.



(h) The amount of personal property included in the sale price.

(i) Whether the property was previously occupied and whether the property will serve as the buyer's primary residence.

(j) The financing arrangements made to purchase the property to be answered at the option of the buyer.

(k) Whether any concessions were made in the sale.

(l) Whether the property was in current use.

(m) Whether land use taxes were considered in the sale.

(n) The buyer's dated signature certifying that the information indicated on the form is true.

II. The inventory of property transfers required by this section shall be filed with the department of revenue administration and with the municipality where the property is located by the purchaser, grantee, assignee, or transferee, no later than 30 days from the recording of the deed at the register of deeds or transfer of real estate, whichever is later. Persons required to file the inventory of property transfers who willfully fail to file or willfully make false statements on the forms shall be guilty of a violation.

III. No deed, recording a transfer of real estate or any interest in real estate, executed before October 1, 1995, shall be required to comply with this section.

IV. Failure to comply with this section shall not be construed to cloud title.

V. Any information provided to the department or the municipality pursuant to this section shall be exempt from the right-to-know law, RSA 91-A.

20 Education Property Tax. RSA 76:3 is repealed and reenacted to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate calculated by the commissioner of revenue administration pursuant to the authority granted in RSA 21-J:35, I-a is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except such property subject to tax under RSA 82.

21 What Taxes Assessed. Amend RSA 76:5 to read as follows:

76:5 What Taxes Assessed. The selectmen shall seasonably assess all state and county taxes for which they have the warrants of the ~~[state]~~ **commissioner of revenue administration** and county treasurers respectively; all taxes duly voted in their towns; and all school~~[-school-house];~~ and village district taxes authorized by law or by vote of any school or village district duly certified to them; and all sums required to be assessed by RSA 33.

22 Commissioner's Warrant. RSA 76:8 is repealed and reenacted to read as follows:

76:8 Commissioner's Warrant.

I. The commissioner of revenue administration shall annually calculate the proportion of the education property tax to be raised by each municipality by multiplying the uniform education property tax rate by the total equalized value of all property in the municipality as determined under RSA 21-J:3, XIII.

II. The commissioner shall issue a warrant under the commissioner's hand and official seal for the amount computed in paragraph I to the selectmen or assessors of each municipality at the time of the setting of the tax rate directing them to assess such sum and pay it to the municipality for the use of the school district or districts and, if there is an excess education tax payment due under RSA 198:47, I, directing them to assess the amount of that excess education tax payment and pay it to the department

of revenue administration for deposit in the education trust fund. The commissioner shall also issue a warrant under the commissioner's hand and official seal for such sums and at such times as may be prescribed for other taxes assessed by such selectmen or assessors of the municipality.

III. Municipalities are authorized to assess and collect property taxes locally to meet budgeted expenses of education not funded through distributions from the education trust fund under RSA 198:39.

23 Commissioner's Report. RSA 76:9 is repealed and reenacted to read as follows:

76:9 Commissioner's Report. The commissioner of revenue administration shall report to the governor, the speaker of the house of representatives, the president of the senate, and the commissioner of education each year on or before October 1, a statement of the education property tax warrants to be issued for the tax year commencing April 1 of the succeeding year.

24 Information Required. Amend RSA 76:11-a, I to read as follows:

I. The tax bill which is sent to every person taxed, as provided in RSA 76:11, shall show the rate for municipal, ~~[school]~~ **local education, state education**, and county taxes separately, the assessed valuation of all lands and buildings for which said person is being taxed, and the right to apply in writing to the selectmen or assessors for an abatement of the tax assessed as provided under RSA 76:16. The department of revenue administration shall compute for each town and city the rates which are to appear on the tax bills and shall furnish the required information to the appropriate town or city.

25 Extent. Amend RSA 85:1 to read as follows:

85:1 Who May Issue. The state treasurer **or the commissioner of revenue administration**, and each county and town treasurer, may issue extents under their hands and seals respectively, in cases authorized by law, and such extents shall be deemed to be executions against the person and property.

26 New Subdivisions; State Aid for Educational Adequacy; Education Trust Fund; Excess Education Property Tax Payment; Commission. Amend RSA 198 by inserting after section 37 the following new subdivisions:

State Aid for Educational Adequacy; Education Trust Fund

198:38 Definitions. In this subdivision:

I. "Municipality" means a city, town, or unincorporated place.

II. "School district" means school district as defined in RSA 194:1 or RSA 195:1.

III. "Elementary school" means a school with any of the grades kindergarten through 8.

IV. "High school" means a school with any of the grades 9 through 12.

V. "Average base per pupil cost of an elementary school pupil" means the amount as determined in accordance with RSA 198:40.

VI. "Weighted pupils" means resident pupils who have been assigned to one or more of the following classifications:

(a) An elementary pupil, which shall include kindergarten pupils, 1.0.

(b) A high school pupil, 1.2.

(c) An elementary pupil who is eligible to receive a free or reduced-priced meal shall receive an additional weight of .14.

VII. "Educationally disabled child" means an educationally disabled child as defined in RSA 186-C:2, I.

VIII. "Consumer price index" means the consumer price index for all items for urban consumers for the Northeast published by the United States Department of Labor.

IX. "Special education costs" means the cost of special education and educationally related services provided to educationally disabled children reported by school districts on the MS-25 form less any federal IDEA funds, state special education catastrophic aid, and special education medicaid reimbursement received by the districts.

X. "Average daily membership in attendance" means average daily membership in attendance as defined in RSA 189:1-d, III.

XI. "Average daily membership in residence" and "resident pupils" mean the average daily membership in residence as defined in RSA 189:1-d, IV.

XII. "Transportation costs" means the costs of transporting pupils to and from school and other school activities reported by school districts on the MS-25 form.

#### 198:39 Education Trust Fund Created and Invested.

I. The state treasurer shall establish an education trust fund in the treasury. Moneys in such fund shall not be used for any purpose other than to distribute adequate education grants to municipalities' school districts pursuant to RSA 198:42 and make catastrophic aid payments under RSA 186-C:18, III(d). The state treasurer shall deposit into this fund immediately upon receipt:

(a) The full amount of excess property tax payments from the department of revenue administration pursuant to RSA 198:47.

(b) The total amount of hardship claims reported by the commissioner of revenue administration under RSA 198:48, VII.

(c) All moneys due the fund in accordance with RSA 284:21-j.

(d) The school portion of any revenue sharing funds distributed pursuant to RSA 31-A which were apportioned to school districts in the property tax rate calculations in 1998.

(e) Tobacco settlement funds in the amount of \$4,000,000 annually.

(f) Any other moneys appropriated from the general fund.

II. The education trust fund shall be nonlapsing. The state treasurer shall invest that part of the fund which is not needed for immediate distribution in short-term interest-bearing investments. The income from these investments shall be returned to the fund.

#### 198:40 Methodology for Calculating the Cost of an Adequate Education.

I. For the fiscal year beginning July 1, 1999, the average base per pupil cost of an elementary school pupil shall be \$3,246.

II. For the fiscal year beginning July 1, 2000, the average base per pupil cost of an elementary school pupil shall be \$3,295.

III. For the biennium beginning July 1, 2001, and every biennium thereafter, the average base per pupil cost of an elementary school pupil shall be established by the general court.

IV. If the general court makes no change in the average base per pupil cost of an elementary school pupil, the average base per pupil cost for the previous fiscal year shall be adjusted by the change in the consumer price index between the January immediately preceding the beginning of the fiscal year of distribution and the second preceding January. In making the calculations required by this subdivision in subsequent fiscal years, the department of education shall use the average daily membership in residence, special education costs, and transportation costs for the second preceding school year and the district percentage of pupils eligible to receive a free or reduced-priced meal reported to the department of education on October 1 of the second preceding calendar year.

V. The weighted average daily membership in residence for each district shall be calculated by combining the district's elementary average



daily membership in residence with its weighted high school average daily membership in residence and the district's additional average daily membership in residence resulting from elementary pupils eligible to receive a free or reduced-priced meal. The statewide weighted average daily membership in residence of pupils shall be calculated by combining the weighted average daily membership in residence of each school district in the state.

VI. For each fiscal year, the statewide cost of an adequate education for all pupils shall be calculated by multiplying the average base per pupil cost of an adequate education by the statewide weighted average daily membership in residence of pupils and then adding 99.5 percent of total statewide special education costs plus 70 percent of total statewide district transportation costs.

198:41 Determination of Adequate Education Grants.

I. Except for municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of revenue administration shall determine the amount of the adequate education grant for the municipality as follows:

(a) Multiply the average base per pupil cost of an adequate education by the weighted average daily membership in residence for the municipality;

(b) Add to the product of subparagraph (a), 70 percent of the municipality's apportioned transportation cost;

(c) Add to the sum of subparagraph (b), 99.5 percent of the municipality's apportioned special education cost;

(d) Subtract from the sum of subparagraph (c) the amount of the education property tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76:9 for the next tax year.

II. For municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of revenue administration shall determine the amount of the adequate education grant for each municipality as the lesser of the following 2 calculations:

(a) The amount calculated in accordance with paragraph I of this section; or

(b) The total amount paid for items of current education expense as determined by the department of education minus the amount of the education property tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76:9 for the next tax year.

198:42 Distribution Schedule of Adequate Education Grant.

I. The adequate education grant determined in RSA 198:41 shall be distributed to each municipality's school district or districts from the education trust fund in 4 payments of 20 percent on July 1, 20 percent on September 1, 30 percent on January 1, and 30 percent on April 1 of each school year.

II. For the fiscal year beginning July 1, 1999, \$400,000,000 is hereby appropriated from the education trust fund created under RSA 198:39 to the department of revenue administration to fund the grants under RSA 198:41.

III. The general court is constitutionally obligated to fund the cost of an adequate education, and there are hereby appropriated the funds necessary to make the payments required under RSA 198:41. The governor is authorized to draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

IV. The department of revenue administration shall certify the amount of each grant to the state treasurer and direct the payment thereof to the school district. When a payment of a grant is made to a school district, the municipality on whose behalf the payment is made, shall receive notification from the state treasurer of the amount of the payment made to its school district or districts.

198:43 Additional Education Expenditures. School districts are authorized to dedicate additional resources to schools and to develop educational programs beyond those required for an adequate education. School districts shall raise and appropriate funds to meet budgeted expenses of education not funded through distributions from the education trust fund under RSA 198:39.

198:44 Use of Funds for Education Purposes.

I. Annually, each school district shall appropriate an amount that equals or exceeds the amount necessary to fund an adequate education for the pupils in that district. Notwithstanding any other provision of law, in the event a school district fails to appropriate at least the required amount, that amount shall be assessed and collected by the municipality, appropriated to the school district, and expended for educational purposes in accordance with paragraph IV without a vote of the school district.

II. On or before June 30 of each year, the individual with fiscal responsibility in each municipality shall submit a statement to the commissioner of revenue administration and the commissioner of education that the funds collected by the municipality pursuant to RSA 76:8 have been paid over to the school district or districts to be expended for educational purposes in accordance with paragraph IV. The statement shall include the following: *"I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete."*

III. If a municipality uses any part of the funds collected pursuant to RSA 76:8 for non-educational purposes, the municipality shall pay to the school district an amount equal to the portion of funds used for such non-educational purposes.

IV. The funds collected by municipalities pursuant to RSA 76:8 and the funds received from the state pursuant to RSA 198:42 shall be appropriated by a school district only for current education expenses or transfers to reserves or trusts funds and shall not be used for any other purpose.

V. On or before June 30 of each year, the individual with fiscal responsibility in each school district shall submit a statement to the commissioner of revenue administration and the commissioner of education that an amount of money that equals the amount necessary to fund an adequate education for the pupils in that district was used in accordance with paragraph IV. The statement shall include the following: *"I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete."*

198:45 Duties of the Department of Education and the Board of Education.

I. The department of education shall, on or before September 30 of each year, collect from the school districts final data concerning all aspects of student attendance for the school year ending June 30 of that year necessary to establish the average daily membership, average daily membership in residence, and weighted average daily membership in residence, including the municipality of residence for each pupil for that year. The depart-

ment of education shall submit a report by December 31 to the speaker of the house of representatives and the senate president to be used for purposes of determination by the legislature of the appropriation to the education trust fund. A copy of such report shall, at the same time, be given to the department of revenue administration.

II. The board of education shall adopt rules pursuant to RSA 541-A necessary to the proper administration of this subdivision.

198:46 Submission of Data by School Districts. Each school district shall submit all attendance information required by the department of education under this subdivision on or before September 30 of each year.

Excess Education Property Tax Payment; Hardship Relief

198:47 Excess Education Property Tax Payment.

I. Except as provided in paragraph IV and RSA 198:48, VI, municipalities for which the education property tax exceeds the amount necessary to fund an adequate education determined by RSA 198:40 shall collect and remit such excess amount to the department of revenue administration on or before March 15 of the tax year in which the excess occurs.

II. The amount of such excess to be remitted shall not include any income derived from the investment of funds by the town treasurer under RSA 41:29. Any funds remaining after full payment of the excess tax required in paragraph I shall become available for unrestricted use by the municipality.

III. The commissioner of the department of revenue administration shall collect from the selectmen the excess tax and pay the excess tax over to the state treasurer for deposit in the education trust fund established by RSA 198:39.

IV. The commissioner of the department of revenue administration shall calculate the excess amount owed by each municipality pursuant to paragraph I for the tax year 1999. Notwithstanding any other provision of this section, the warrant issued pursuant to RSA 76:8 shall direct municipalities to only collect and remit to the department of revenue administration not more than the following percentages of excess amounts during the tax years 1999-2001:

- (a) In tax year 1999, 25 percent;
- (b) In tax year 2000, 50 percent; and
- (c) In tax year 2001, 75 percent.

198:48 Education Property Tax Hardship Relief.

I. As provided in this section, eligible claimants shall be granted hardship relief from the state education property tax due on their homesteads under RSA 76:3 for 4 tax years following the enactment of RSA 76:3.

II. The following definitions apply to this section:

(a) "Homestead" means the dwelling owned by a claimant or in the case of a multi-unit dwelling, the portion of the dwelling which is used as the claimant's principal residence. "Homestead" shall not include land and buildings taxed under RSA 79-A or land and buildings or the portion of land and buildings rented or used for commercial or industrial purposes. In this paragraph, a dwelling is "owned" by a claimant if the claimant is in possession of the dwelling as a vendee under a land contract. A dwelling may be "owned" by more than one person if they hold the property as joint tenants or tenants in common.

(b) "Household income" means the sum of the adjusted gross incomes for federal income tax purposes of the claimant and any member of the claimant's household who resides in the homestead for which a claim is made.



III. An eligible hardship relief claimant is a person who:

(a) Resides in a taxing jurisdiction that realizes in the first year after the effective date of the state education property tax in RSA 76:3 a net increase in education property taxes of greater than 20 percent, comparing the amount calculated for education property taxes for the property tax year ending March 31, 2000, to the amount of the school portion of the claimant's local property tax on the same property for the tax year ending March 31, 1999;

(b) Pays school property taxes on homestead property; and

(c) Has total household income of less than 75 percent of the median total household income of all New Hampshire residents in the year in which the claim for relief is made.

IV. The amount of hardship relief shall be calculated as follows:

(a) Start with the amount of education property taxes due on the claimant's homestead property for the tax year ending March 31, 2000;

(b) Subtract the amount of the school portion of the local property tax due on the same property for the tax year ending March 31, 1999; and

(c) Apply the appropriate percentage to the difference computed in subparagraph (b) as follows:

(1) For the tax year ending March 31, 2000, the percentage is 50;

(2) For the tax year ending March 31, 2001, the percentage is 25;

(3) For the tax year ending March 31, 2002, the percentage is 10;

(4) For the tax year ending March 31, 2003, the percentage is 10;

V. To receive hardship relief under this section, a claimant shall file a form with the claimant's final property tax payment and shall deduct the hardship amount calculated on the form from the amount due. The commissioner shall develop a form for taxpayers to claim hardship relief under the authority of RSA 198:49.

VI. The total amount of hardship claims received by a municipality shall be deducted from the amount collected and remitted to the department of revenue administration under RSA 198:47, I, and each municipality shall send to the department of revenue administration the claim forms it receives from claimants along with the excess property tax it remits under that section.

VII. On or before May 1 of each year, the commissioner of the department of revenue administration shall report to the governor, the treasurer, the speaker of the house of representatives, and the president of the senate the total amount of hardship claims. The treasurer shall deposit into the education trust fund established in RSA 198:39 the total amount of hardship claims reported by the commissioner of the department of revenue administration. The funds necessary for the deposit required by this paragraph are hereby appropriated and the governor is authorized to draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

198:49 Form. The commissioner shall approve and provide forms relative to the reporting and remitting of excess education property tax by the municipalities and relative to hardship claims.

Adequate Education and Education

Financing Reform Commission

198:50 Adequate Education and Education Financing Reform Commission Established; Membership.

I. There is hereby established an adequate education and education financing reform commission which shall be composed of 19 members as follows:

(a) The chairpersons of the house education and house finance committees, appointed by the speaker of the house.

(b) The chairpersons of the senate education and senate finance committees, appointed by the president of the senate.

(c) Four members appointed by the governor, one of whom shall be an elementary or secondary special education teacher, one of whom shall be a primary teacher who does not teach special education, and one of whom shall be a member of the business community.

(d) The chancellor of the university system of New Hampshire or designee.

(e) The commissioner of the regional community-technical college system.

(f) One member from the state board of education, appointed by the chairperson of the state board of education.

(g) One member from a special education advocacy organization, appointed by such organization; and

(h) Seven members who shall be agreed to and jointly appointed by the governor, the president of the senate, and the speaker of the house consisting of the following:

(1) One local school board member, recommended by the New Hampshire School Boards Association.

(2) One school administrator, recommended by the New Hampshire School Administrators Association.

(3) One special education administrator at the elementary or secondary school level, recommended by the New Hampshire Association of Special Education Administrators.

(4) Two parents of school-age children, one of whom shall be the parent of a child with an educational disability.

(5) One member from the business community, who shall be associated with the School to Work Initiative.

(6) One school business official, recommended by the New Hampshire Association of School Business Officials.

II. The commission shall elect a chairperson from among its membership and shall form subcommittees necessary to perform its duties. The chairperson shall determine the frequency of meetings at its first meeting.

III. The members of the commission shall serve without compensation, provided that legislative members of the commission shall receive mileage at the legislative rate while attending to the duties of the commission, and provided that the parent members of the commission shall be reimbursed for travel expenses associated with their duties on the commission.

IV. In order to ensure that all students are provided an adequate education, the duties of the commission shall be as follows:

(a) Determine and recommend the costs of an adequate education for all students in New Hampshire by determining and calculating adjustments for individual school districts based on yearly inflation, cost of living variances, diseconomies of scale, transportation variability, demographics, including for school districts with a disproportionate number of students who are economically disadvantaged or have educational disabilities, and such other factors as deemed relevant.

(b) Determine and recommend the amount of state aid, including building aid, to be distributed to cities and towns based upon the cost of an adequate education as set forth in subparagraph (a) and the method for distributing the state aid.

(c) Recommend changes in policy and procedure in the areas of educational improvement and accountability.

(d) Recommend interim and permanent processes to ensure adequate planning and implementation at the local and state level of special education and educationally related services, including planning for and development, on an interagency basis, of local school based options for pupils who have been placed in alternative or separate schools who could be placed in appropriate less restrictive options if available.

V. The commission shall be divided into the following policy subcommittees: adequacy and cost, educational improvement and accountability, and special education funding.

VI. The commission shall report its findings and recommendations no later than December 1, 2000. The report shall include, for each recommendation, proposed implementation schedules with timelines, specific steps, agencies and persons responsible, and resources needed. Where feasible, all plans, measures and initiatives shall be proposed as legislation or regulation so that they will have the force of law. All recommendations and plans shall be designed to be fully implemented no later than September 1, 2004.

VII. The department of justice, department of revenue administration, department of education, and department of health and human services shall provide the commission with assistance.

27 Appropriation. The sum of \$150,000 for the fiscal year ending June 30, 2000, is hereby appropriated for the purposes of the commission established in RSA 198:50 as inserted by section 26 of this act. This sum shall be nonlapsing until June 30, 2001. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

28 New Subparagraphs; Special Education; Catastrophic Aid Payments Constitutionally Obligated. Amend RSA 186-C:18, III by inserting after subparagraph (c) the following new subparagraphs:

(d) For each fiscal year beginning with the fiscal year ending June 30, 2000, 0.5 percent of the total statewide special education costs as defined in RSA 198:38, IX shall be appropriated from the education trust fund established in RSA 198:39 to the department of education to assist those school districts which, under rules adopted by the state board of education, qualify for emergency assistance in meeting special education catastrophic costs pursuant to this section.

(e) The general court is constitutionally obligated to fund the cost of an adequate education, and there are hereby appropriated for the biennium ending June 30, 2001, the funds necessary to make the payments required in this section. The governor is authorized to draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

29 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:7, I to read as follows:

I. If a cooperative school district was organized prior to July 1, 1963, during the first 5 years after the formation of a cooperative school district each preexisting district shall pay its share of all capital outlay costs and *all* operational costs *in excess of the amount determined necessary to provide an adequate education under RSA 198:40* in accordance with either one of the following formulas as determined by a majority vote of the cooperative district meeting:



30 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:14, I(b) to read as follow:

(b) The commissioner of revenue administration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum, in accordance with RSA 21-J:35, which may be used as a setoff against the amount appropriated when it appears to the commissioner of revenue administration such adjustment is in the best public interest. ***The commissioner of revenue administration shall apply the total amount of all adequate education grants received pursuant to RSA 198:42.***

31 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:18, III(e) to read as follows:

(e) The method of apportioning ~~the~~ ***all*** operating expenses ***in excess of the amount determined necessary to provide an adequate education under RSA 198:40,*** of the cooperative school district among the several preexisting districts and the time and manner of payment of such shares. Home education pupils who do not receive services from the cooperative school district, except an evaluation pursuant to RSA 193-A:6, II, shall not be included in the average daily membership relative to apportionment formulas.

32 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:18, IX to read as follows:

IX. The organization meeting of a cooperative school district shall be called to order by the chairperson of the cooperative school district planning board, or by the clerk-treasurer thereof, who shall serve as temporary chairperson for the first order of business which shall be the election of a moderator and of a temporary clerk, by ballot, who shall be qualified voters of the district. From and after the issuance of the certificate of formation by the board to the date of operating responsibility of the cooperative school district, such district shall have all the authority and powers of a regular school district for the purposes of incurring indebtedness, for the construction of school facilities and for such other functions as are necessary to obtain proper facilities for a complete program of education. When necessary in such interim, the school board of the cooperative school district is authorized to prepare a budget and call a special meeting of the voters of the district, which meeting shall have the same authority as an annual meeting, for the purpose of adopting the budget, making necessary appropriations, and borrowing money. Whenever the organization meeting is held on or before April 20 in any calendar year, no annual meeting need be held in such calendar year. Sums of money raised and appropriated at the organization meeting or any interim meeting prior to the first annual meeting shall be forthwith certified to the commissioner of revenue administration and the state department of education upon blanks prescribed and provided by the commissioner of revenue administration for the purpose, together with a certificate of estimated revenues, so far as known, and such other information as the commissioner of revenue administration may require. The commissioner of revenue administration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum which may be used as a setoff against the amount appropriated when it appears to the commissioner such adjustment is in the best public interest. ***The commissioner of revenue administration shall apply the total amount of all adequate education grants received pursuant to RSA 198:40 as a setoff against the amount appropriated.*** The commissioner of revenue administration shall certify to

the state department of education the total amount of taxes to be raised for said cooperative school district and the state department of education shall determine the proportional share of said taxes to be borne by each preexisting school district and notify the commissioner of revenue administration of its determination. Upon certification by the commissioner of revenue administration the selectmen of each town shall seasonably assess the taxes as provided by law. The selectmen shall pay over to the treasurer of the cooperative district such portion of the sums so raised as may reasonably be required according to a schedule of payments needed for the year as prepared by the treasurer and approved by the cooperative school board, but no such payment shall be greater in percentage to the total sum to be raised by one local district than that of any other local district comprising such cooperative school district.

33 Reference Change. Amend RSA 193:1, I(c) to read as follows:

(c) The relevant school district superintendent has excused a child from attendance because the child is physically or mentally unable to attend school, or has been temporarily excused upon the request of the parent for purposes agreed upon by the school authorities and the parent. Such excused absences shall not be permitted if they cause a serious adverse effect upon the student's educational progress. Students excused for such temporary absences may be claimed as full-time pupils for purposes of calculating state aid under RSA 186-C:18 and ~~[RSA 198:27-37]~~ **adequate education grants under RSA 198:41**.

34 Reimbursement Anticipation Notes; Version Effective Until July 1, 1999. Amend RSA 198:20-d to read as follows:

198:20-d Reimbursement Anticipation Notes. Notwithstanding any other provision of law to the contrary, a school district may incur debt in anticipation of reimbursement under RSA 186-C:18 **and under RSA 198:42**. The governing body, after receiving authorization for borrowing from the legislative body, may elect to recognize the proceeds of the borrowing as revenue for property tax rate setting purposes by providing written notification, prior to September 1, to the commissioner of the department of revenue administration stating the specific amount of borrowing to be recognized as revenue.

35 Reimbursement Anticipation Notes; July 1, 1999 Version. Amend RSA 198:20-d to read as follows:

198:20-d Reimbursement Anticipation Notes. Notwithstanding any other provision of law to the contrary, a school district may incur debt in anticipation of reimbursement under RSA 186-C:18 **and under RSA 198:42**. The governing body, after notice and public hearing, may elect to borrow such funds and to recognize the proceeds of the borrowing as revenue for property tax rate setting purposes by providing written notification to the commissioner of the department of revenue administration stating the specific amount of borrowing to be recognized as revenue. Any borrowing under this section shall be exempt from the provisions of RSA 33, relative to debt limits.

36 Sweepstakes. RSA 284:21-j is repealed and reenacted to read as follows:

284:21-j Establishment. The state treasurer shall credit all moneys received from the sweepstakes commission, and interest received on such moneys, to a special fund from which the treasurer shall pay all expenses of the commission incident to the administration of this subdivision and RSA 287-E. Any balance left in such fund after such expenses are paid shall be deposited in the education trust fund established under RSA 198:39.

37 Transition. As of July 1, 1999, all funds, from any source derived, which would be distributed as foundation aid shall be deposited in the education trust fund under RSA 198:39, including the \$62,000,000 appropriated under 1998, 389:16, II.

38 Removing Reference to Foundation Aid. Amend RSA 198:21, V to read as follows:

V. No pupil counted by any school district for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be ~~[included in average daily membership for the purposes of foundation aid or]~~ counted for the purposes of grants pursuant to RSA 198:22.

39 Removing Reference to Foundation Aid. Amend RSA 198:22, V to read as follows:

V. No pupil counted by any school for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be ~~[included in average daily membership for the purposes of foundation aid or]~~ counted for the purpose of grants pursuant to RSA 198:21.

40 Payment in Lieu of Taxes. Amend RSA 227-H:17 to read as follows:

227-H:17 Payment in Lieu of Taxes. The commissioner of revenue administration shall adopt rules, pursuant to RSA 541-A, relative to forms for application to the commissioner of revenue administration for payment for lost taxes. ~~[In any year in which no state tax is levied,]~~ Any town in which national forest lands and land held by the state for operation and development as state forestland, as defined by the department for the purposes of this section, are situated, whether acquired by gift, devise, purchase, or in any other manner, may apply, by its selectmen, to the commissioner of revenue administration on forms provided by the commissioner, annually before September 1, for the payment of an amount not exceeding the taxes for all purposes which such town might have received from taxes on such lands in such year had such lands been taxable. In the event that the amount appropriated in any biennium shall be insufficient for the purposes under this section, then the towns entitled to benefits under this section shall be reimbursed proportionately, unless otherwise subsequently ordered by the legislature.

41 Special Transition Rules. The following special transition rules shall apply to the implementation of the uniform education property tax established by sections 6-44 of this act in the first fiscal year following enactment:

I. "Total equalized value" as defined in RSA 21-J:3, XIII shall be based upon the amounts reported for the 1997 tax year as determined by the commissioner of revenue administration pursuant to RSA 21-J:3, XIII.

II. For the school year 1999/2000, the adequate education grant determined in RSA 198:41 shall be distributed to each municipality's school district or districts from the education trust fund in 4 payments as follows:

(a) On July 1, 1999, and September 1, 1999, 1/8 the total adequate education grant;

(b) On January 1, 2000, and April 1, 2000, 3/8 the total adequate education grant. The commissioner of revenue administration shall certify the amount of each grant to the state treasurer and direct the payment thereof to the municipality's school district or districts. When a payment of a grant is made to a school district, the municipality on whose behalf the payment is made, shall receive notification from the state treasurer of the amount of the payment made to its school district or districts..



III. Notwithstanding any other provision of law, the commissioner of revenue administration, for the April 1, 1999 tax year, shall issue the warrants required by RSA 76:8 on or before 30 days after the effective date of this act.

IV. Notwithstanding any other provision of law, the commissioner of revenue administration shall determine the amount of the adequate education grant for each municipality pursuant to RSA 198:41 for the 1999/2000 school year on or before 30 days after the effective date of this act.

42 Special Provision for Foundation Aid. Notwithstanding the repeal pursuant to section 44 of this act of RSA 198:27-37, relative to foundation aid and alternative foundation aid, the payment of foundation aid to be made in April 1999 pursuant to RSA 198:31 before such section is repealed, shall be calculated by the department of education and distributed to the recipients as if such repeal had not occurred.

43 Severability. If any provision of this uniform education property tax enacted in sections 6-44 of this act or the application thereof to any person or circumstance is deemed invalid, the invalidity does not affect the other provisions or applications of this act which can be given effect without the invalid provisions or applications and to this end the provisions of this act are severable.

44 Repeal. The following are repealed:

I. RSA 78:20, relative to the applicability of the tobacco tax.

II. RSA 78-B:10-a, relative to the real estate transfer questionnaire.

III. RSA 83-D, relative to the tax on nuclear station property.

IV. RSA 21-J:3, XXIII, relative to the commissioner of revenue administration's duty to determine local per capita income for purposes of foundation aid.

V. RSA 21-J:13, XI, relative to the form and content of the real estate transfer questionnaire.

VI. RSA 194-B:11, VIII, relative to foundation aid in relation to charter and open enrollment schools.

VII. RSA 198:1-3, relative to required annual district property taxes.

VIII. RSA 198:15-i-RSA 198:15-q, relative to kindergarten incentive program, kindergarten aid and alternative kindergarten programs.

IX. RSA 198:21, V, relative to the applicability of foundation aid and child benefit service grant recipients in the calculation of average daily membership.

X. RSA 198:22, V, relative to the applicability of foundation aid and dual enrollment grant recipients in the calculation of average daily membership.

XI. RSA 198:27-37, relative to foundation aid and alternative foundation aid.

45 Business Profits Tax; Rate Increased. Amend RSA 77-A:2 to read as follows:

77-A:2 Imposition of Tax. A tax is imposed at the rate of [7] 8 percent upon the taxable business profits of every business organization.

46 Business Enterprise Tax; Rate Increased; Super Majority to Increase Tax Deleted. Amend RSA 77-E:2 to read as follows:

77-E:2 Imposition of Tax. A tax is imposed at the rate of [~~1/4~~]  $\frac{3}{4}$  of one percent upon the taxable enterprise value tax base of every business enterprise. [~~A 2/3 majority of those present and voting of each house of the general court shall be necessary to increase the tax rate under this section.~~]

47 Capital Gains; Interest and Dividends Tax; Who Taxable. Amend RSA 77:3 to read as follows:

## 77:3 Who Taxable.

[F] Taxable income is that income received from interest ~~[and]~~, dividends, **and capital gains** during the tax year prior to the assessment date by:

~~[(a)]~~ **I.** Individuals who are inhabitants or residents of this state for any part of the taxable year whose **net gains from sales of capital assets and** gross interest and dividend income from all sources exceeds ~~[\$2,400]~~ **\$2,500** during that taxable period.

~~[(b)]~~ **II.** Partnerships, limited liability companies, associations, and trusts, the beneficial interest in which is not represented by transferable shares, whose **net gains from sales of capital assets and** gross interest and dividend income from all sources exceeds ~~[\$2,400]~~ **\$2,500**, during the taxable year, but not including a ~~[qualified investment company as defined in RSA 77-A:1, XXI, or]~~ a trust comprising a part of an employee benefit plan, as defined in the Employee Retirement Income Security Act of 1974, section 3.

~~[(c)]~~ **III.** Fiduciaries deriving their appointment from a court of this state whose **net gains from sales of capital assets and** gross interest and dividend income from all sources exceeds ~~[\$2,400]~~ **\$2,500** during the taxable year.

~~[H. No person shall be subject to tax under RSA 77 solely due to its holding an ownership interest in a qualified investment company as defined in RSA 77-A:1, XXI.]~~

48 New Paragraph; Sales of Capital Assets Taxable; Interest and Dividends Tax. Amend RSA 77:4 by inserting after paragraph VI the following new paragraph:

VII. Net gains from the sale or exchange of capital assets which shall be the net capital gain as determined for federal income tax purposes, after due allowance for losses and holding periods, from sales or exchanges of capital assets or assets treated as capital assets, other than notes, bonds or other obligations of the state of New Hampshire or any of the political subdivisions thereof, or its or their respective agencies or instrumentalities, or from transactions or events taxable to the taxpayer as such sales or exchanges, and being the net amount includable in the taxpayer's adjusted gross income, with respect to all such sales, exchanges, transactions, or events, under the provisions of the United States Internal Revenue Code in effect for the taxable year.

49 Exemptions; Interest and Dividends Tax. Amend RSA 77:5 to read as follows:

77:5 Exemptions. Each taxpayer shall have the following exemptions:

I. **Taxable** income of ~~[\$2,400]~~ **\$2,500**.

II. An additional \$1,200 if either or both taxpayers are 65 years of age or older on the last day of the tax year.

III. An additional ~~[\$1,200]~~ **\$2,500** if either or both taxpayers are blind.

IV. An additional \$1,200 if either or both taxpayers are disabled, unable to work, and have not yet reached their sixty-fifth birthday.

V. An additional \$5,000 for each taxpayer 65 years of age or older on the last day of the tax year if the taxpayer's adjusted gross income as determined in accordance with section 62 of the United States Internal Revenue Code is less than \$30,000 for an individual or \$60,000 for a married couple filing jointly.

VI. All income from the sale of the taxpayer's principal residence to the extent such income is excluded from taxation under section 121 of the United States Internal Revenue Code in effect for the taxable year.

VII. All income from gains from the sale of capital assets taxed under RSA 77-A.

50 Reference to Capital Gains Added. Amend RSA 77:5-a to read as follows:

77:5-a Married Taxpayers; Joint Returns. A married taxpayer may claim the exemptions provided in RSA 77:5 for both self and spouse, regardless of the ownership of the income from **net capital gains**, interest or dividends, provided that both husband and wife file a joint return.

51 Repeal. The following are repealed:

I. RSA 77:4-c, relative to sale or exchange of transferable shares not taxable.

II. RSA 77:4, V, relative to the taxation of interests in qualified investment companies.

III. RSA 77:4, VI, relative to the taxation of interests in qualified capital companies.

52 Definitions; Meals and Rooms Tax; Operator. Amend RSA 78-A:3, IV to read as follows:

IV. "Operator" means any person operating a hotel, whether as owner or proprietor or lessee, sublessee, mortgagee, licensee, or otherwise; and any person charging for a taxable meal; and any person ~~engaged in both activities~~, **corporation, partnership, proprietor, lessee, sublessee, mortgagee, licensee or otherwise engaged in the business of rental of motor vehicles**.

53 New Paragraphs; Meals and Rooms Tax; Motor Vehicle Rental; Definitions. Amend RSA 78-A:3 by inserting after paragraph XIII the following new paragraphs:

XIV. "Motor vehicle" means a self-propelled vehicle designed to transport persons or property on a public highway, including a van or jeep. The term does not include the following:

- (a) A device moved only by human power;
- (b) A device used exclusively on stationary rails or tracks;
- (c) Road-building machinery; or
- (d) A mobile office.

XV. "Rental agreement" means an agreement by the owner of a motor vehicle to provide, for not longer than 180 days, the exclusive use of that motor vehicle to another for consideration.

XVI. "Gross rental receipts" means value received or promised as consideration to the owner of a motor vehicle for rental of the vehicle, but does not include:

- (a) Separately stated charges for insurance;
- (b) Charges for damages to the motor vehicle occurring during the rental agreement period;
- (c) Separately stated charges for motor fuel sold by the owner of the motor vehicle.

XVII. "Owner of a motor vehicle" means a person named in the certificate of title as the owner of the vehicle or a person who has the exclusive use of a motor vehicle by reason of rental and holds the vehicle for re-rental.

XVIII. "Department" means the department of revenue administration.

XIX. "Renter" means any person who, for consideration paid to another, is provided a vehicle under a rental agreement.

54 Meals and Rooms Tax; Licenses Required; Penalty. Amend RSA 78-A:4 to read as follows:

78-A:4 Licenses Required; Penalty.

I. Each operator shall register with the department the name and address of each place of business within the state where ~~he~~ **it** operates a hotel ~~or~~, sells taxable meals, **or rents motor vehicles**. The opera-



tor shall pay \$5 for each registration, upon receipt of which the department shall issue a license for each place in such form as it determines, attesting that the registration has been made. The license expires on June 30 in each odd-numbered year unless sooner revoked or suspended by the department. The license shall be conspicuously posted in a public area upon the premises to which it relates.

II. No person shall engage in serving taxable meals [or], renting rooms, **or renting motor vehicles** without first obtaining the license required by this section. The license is nonassignable and cannot be transferred. Any person who fails to register or obtain a license as provided in this section shall be subject to the penalty provisions of RSA 21-J:39.

55 New Paragraph; Tax Imposed on Motor Vehicle Rentals. Amend RSA 78-A:6 by inserting after paragraph II the following new paragraph:

II-a. A tax of 8 percent is imposed upon the gross rental receipts of each rental.

56 Meals and Rooms Tax; Collection of Tax. Amend RSA 78-A:7, I to read as follows:

I. The operator shall either state the amount of the tax to each occupant [or], purchaser of a meal **or renter**, or state that the tax is included in the price of the occupancy or meal **or the gross rental receipts received**. The operator shall demand and collect the tax from the occupant [or], purchaser, **or renter**. The occupant [or], purchaser, **or renter** shall pay the tax to the operator. If the tax is included in the price of the meal or occupancy **or the gross rental receipts received**, upon request the operator shall state to the purchaser [or], occupant, **or renter** the amount of the tax.

57 Tobacco Settlement Funds. Beginning with the fiscal year ending June 30, 1999, \$4,000,000 of funds received each fiscal year by the state of New Hampshire as a result of the settlement in 1998 of litigation against tobacco companies shall be deposited in the education trust fund established in RSA 198:39. The governor is authorized to draw a warrant for said sums out of funds received by the state from settlement of the tobacco litigation.

58 Statement of Purpose. In adopting sections 59-65 of this act, the general court finds that:

I. The economic vitality of New Hampshire's grand hotels is threatened by the creation of large gaming and resort complexes in southern New England and Canada. The grand hotels will be further impacted if the proposed expansion of gaming occurs in the southern part of the state. New Hampshire's grand hotels are an inherent part of our state's traditions, character and quality of life. Their preservation and continued existence is of fundamental importance to the economic vitality, tourism trade, hospitality, and educational opportunities of the state and to the preservation and enhancement of employment in the communities in which they exist. Therefore, the grand hotels must be given an opportunity to position themselves in a changing and increasingly competitive environment.

II. New Hampshire's grand hotels provide substantial and positive impacts on the economies of the local communities in which they are located, as well as on that of the state of New Hampshire. The grand hotels pay substantial local property taxes, fees, and rooms and meals taxes and provide jobs to thousands of New Hampshire residents. The grand hotels are an important part of the tourism industry.

III. The pari-mutuel industry provides substantial and positive impacts on the economies of the local communities in which racetracks are located, as well as that of the state of New Hampshire. The pari-mutuel

facilities pay substantial local property taxes and fees and provide jobs to thousands of New Hampshire residents. The pari-mutuel industry is also a significant part of tourism in the state.

IV. The pari-mutuel industry and the grand hotels face substantial competition from various sources. Racetracks in other jurisdictions are assessed lower taxes and receive substantial incentives to support this industry. Large resort hotels in other states have access to state-created amenities to attract year-round guests.

59 New Chapter; Electronic Games of Chance. Amend RSA by inserting after chapter 284 the following new chapter:

#### CHAPTER 284-A

##### ELECTRONIC GAMES OF CHANCE

284-A:1 Definitions. In this chapter:

I. "Electronic games of chance machine" means an electronic, mechanical, or computerized machine licensed by the gaming oversight authority which, upon the insertion of cash, tokens or the payment of any consideration whatsoever, is available to be played where, by chance or skill, or both, the player may receive cash, tokens or any consideration whatsoever. Electronic games of chance machines include, but are not limited to, slot machines, video poker machines, and video lottery machines. Electronic games of chance machines do not include any redemption slot machines and redemption poker machines as defined in RSA 647 or video poker machines or other similar machines used for amusement purposes only and which do not disburse cash or tokens.

II. "Gaming oversight authority" means the authority established by RSA 284-A:2.

III. "Grand hotel" means a facility which operated with a minimum of 195 rental units in a single structure available to the public as of July 1, 1998, has restaurant facilities, restrooms, bathing facilities, public telephones, an attached 18-hole golf course in common ownership with the grand hotel facility and adequate parking for patrons.

IV. "Grand hotel applicant" means a person who owns and operates a grand hotel.

V. "Grand hotel licensee location" means the sole location within the grand hotel where electronic games of chance machines are located, which location must have existed as of January 1, 1998.

VI. "Net machine income" means all cash or other consideration utilized to play an electronic games of chance machine, less all cash or other consideration paid to players of electronic games of chance machines as winnings.

VII. "Operator applicant" means the entity in which a pari-mutuel licensee, grand hotel or resort hotel applicant will participate and apply for an operator's license to operate electronic games of chance machines at the pari-mutuel, grand hotel, or resort hotel licensee location, as applicable.

VIII. "Operator's license" means the license issued by the gaming oversight authority to an operator licensee which allows the operator licensee to possess, conduct and operate electronic games of chance machines in accordance with this chapter.

IX. "Operator licensee" means a pari-mutuel licensee, grand hotel applicant, resort hotel applicant or the operator applicant who is issued a license by the gaming oversight authority to operate electronic games of chance machines pursuant to this chapter.

X. "Pari-mutuel commission" means the New Hampshire pari-mutuel commission as established in RSA 284:6-a.

XI. "Pari-mutuel licensee" means an entity licensed and authorized to conduct either:

(a) Live horse racing as provided in RSA 284:16 for at least the number of days as required in RSA 284:22-a, II(a)(3) as determined by the pari-mutuel commission; or

(b) Live dog racing as provided in RSA 284:16-a for at least the number of days as required in RSA 284:22-a, II(a)(3) as determined by the pari-mutuel commission.

XII. "Pari-mutuel licensee location" means the facility at which the pari-mutuel licensee is located and where the pari-mutuel licensee conducts live thoroughbred horse racing or live dog racing as of January 1, 1998 and any real estate in which the pari-mutuel licensee has an interest as of January 1, 1998 which is adjacent to the real estate on which the pari-mutuel licensee conducts live thoroughbred horse racing or live dog racing; provided that the pari-mutuel licensee location shall include any structures that may be constructed at such location after January 1, 1998.

XIII. "Resort hotel" means a facility which operated with a minimum of 150 rental units in a single structure available to the public as of July 1, 1998, has restaurant facilities, restrooms, bathing facilities, public telephones and adequate parking for patrons in compliance with local zoning ordinances.

XIV. "Resort hotel applicant" means a person who owns and operates a resort hotel.

XV. "Resort hotel licensee location" means the sole location within the resort hotel where electronic games of chance machines are located, which location must have existed as of January 1, 1998.

XVI. "Sweepstakes commission" means the New Hampshire sweepstakes commission as established by RSA 284:21-a.

XVII. "Technology provider" means any person or entity which designs, manufactures, installs, distributes, or supplies electronic games of chance machines for sale or lease to the sweepstakes commission, and which are for use by an operator licensee for conducting electronic games of chance in accordance with this chapter.

XVIII. "Token" means the coin, which is not legal tender, sold by a cashier in a face amount equal to the cash paid by a player for the sole purpose of playing an electronic games of chance machine at a pari-mutuel licensee location or paid to a player of an electronic games of chance machine, which can be exchanged for cash at the pari-mutuel licensee location where the electronic games of chance machine is located.

#### 284-A:2 Gaming Oversight Authority.

I. There is hereby established the New Hampshire gaming oversight authority. The gaming oversight authority shall consist of the attorney general, the commissioner of safety, and the commissioner of revenue administration or their respective designees. The attorney general or the designee of the attorney general shall serve as the chairperson of the gaming oversight authority.

II. The gaming oversight authority shall not grant a license to an eligible grand hotel applicant or resort hotel applicant that does not agree to provide the minimum distribution of net machine income as provided in RSA 284-A:12. A grand hotel applicant or resort hotel applicant may increase its distribution of net machine income as part of the application to the gaming oversight authority.

III. No license shall be issued to any person under this chapter without the prior approval of the gaming oversight authority. The gaming oversight authority shall issue licenses only after completion of the in-



vestigations set forth in this chapter and the recommendation to issue such license from the pari-mutuel commission or the sweepstakes commission, as the case may be. If the pari-mutuel commission or the sweepstakes commission does not recommend that a license be issued to an applicant, such applicant may apply to the gaming oversight authority for such license.

IV. A grand hotel applicant or a resort hotel applicant shall apply directly to the gaming oversight authority.

V. In addition to the responsibilities set forth in RSA 284-A:2, II, the gaming oversight authority shall have general responsibility for the implementation of this chapter and shall adopt rules under RSA 541-A relative to:

(a) Hearing and deciding promptly and in reasonable order all license applications or recommendations for the suspension or revocation of any license issued under this chapter.

(b) Conducting all investigations required under this chapter with regard to the application of any applicant for a license.

(c) Notifying the pari-mutuel commission that it has received an application by a pari-mutuel licensee or an operator applicant for issuance of an operator license at a pari-mutuel licensee location and requiring the pari-mutuel commission to provide the gaming oversight authority with all records of the pari-mutuel commission regarding the licensing of the pari-mutuel licensee.

(d) Conducting hearings pertaining to civil violations of this chapter or rules under the provisions of this chapter and collecting all penalties under the provisions of this chapter.

(e) Establishing standards and a reasonable fee structure for the licensing and renewal of licenses for operators.

(f) Establishing standards and a reasonable fee structure for the licensing and renewal of licenses for technology providers.

(g) Establishing standards and a reasonable fee structure for the licensing and renewal of licenses for electronic games of chance employees.

(h) Establishing technical standards for approval of electronic games of chance machines, including mechanical and electrical reliability and security against tampering, as it may deem necessary to protect the public from fraud or deception and to ensure the integrity of their operation.

(i) Establishing criteria for licensing under RSA 284-A:8.

(j) Establishing standards for reviewing, altering, removing, constructing or enlarging any structure at the pari-mutuel licensee location, grand hotel licensee location, or resort hotel licensee location.

(k) Such other rules as may be necessary to implement this chapter.

VI. The gaming oversight authority shall have the authority to issue subpoenas and compel the attendance of witnesses, to administer oaths, and require testimony of witnesses under oath.

VII. Pending the adoption of rules under RSA 541-A, and notwithstanding RSA 541-A:18, the gaming oversight authority shall adopt interim rules after public hearing and within 30 days after enactment of this chapter. Such interim rules shall automatically expire upon the adoption of rules under RSA 541-A.

VIII. No later than March 31 in each calendar year, the gaming oversight authority shall provide a report to the fiscal committee of the general court, regarding the operation of electronic games of chance machines. Such report shall include any recommendations for legislation.

IX. With regard to minutes and records of the gaming oversight authority:

(a) The gaming oversight authority shall cause to be made and kept a record of all proceedings of public meetings of the gaming oversight authority. A verbatim transcript of those proceedings shall be prepared by the gaming oversight authority upon the request of any member of the authority or upon the request of any other person and the payment by that person of the costs of preparation. A copy of a transcript shall be made available to any person upon request and payment of the costs of preparing the copy.

(b) The gaming oversight authority shall keep and maintain a list of all applicants for licenses it receives under this chapter together with a record of all actions taken with respect to such applicants. A file and record of the actions by the gaming oversight authority shall be open to public inspection provided, however, that the information regarding any applicant whose license or registration has been denied, revoked, or not renewed shall be removed from such list after 5 years from the date of such action.

(c) The gaming oversight authority shall maintain such other files and records as the gaming oversight authority determines is necessary.

(d) All information and data required by the gaming oversight authority to be furnished to it, or which may otherwise be obtained, shall be considered to be confidential and shall not be revealed in whole or in part except in the course of the necessary administration of this chapter, or upon the lawful order of a court of competent jurisdiction, or, with the approval of the attorney general, to a duly authorized law enforcement agency.

(e) All information and data pertaining to an applicant's criminal record, family, and background furnished to or obtained by the gaming oversight authority from any source shall be considered confidential and shall be withheld in whole or in part. Such information shall be released upon the lawful order of a court of competent jurisdiction or to a duly authorized law enforcement agency.

(f) Notice of the contents of any information or data released, except to a duly authorized law enforcement agency pursuant to subparagraphs (d) or (e) of this paragraph, shall be given to any applicant, registrant, or licensee in a manner prescribed by the rules adopted by the gaming oversight authority.

X. The gaming oversight authority may from time to time contract for and procure on a fee or independent contracting basis such financial, economic, or security consultants and any other technical and professional services as the authority deems necessary for the discharge of its duties. The cost shall be a charge against the general fund.

#### 284-A:3 Duties of the Pari-mutuel Commission.

##### I. The pari-mutuel commission shall:

(a) Provide to the gaming oversight authority all records pertaining to the licensing of a pari-mutuel licensee under RSA 284 within 30 days after the pari-mutuel commission receives notice from the gaming oversight authority pursuant to RSA 284-A:2, V(c).

(b) Hear and make recommendations promptly but no later than 60 days after receipt of notice from the gaming oversight authority pursuant to RSA 284-A:2, V(c) to the gaming oversight authority and in reasonable order all license applications for a license under RSA 284-A:8, II.

II. The pari-mutuel commission shall make its recommendation to the gaming oversight authority in writing and after hearing. All hearings shall be conducted in accordance with the rules adopted by the pari-mutuel commission under RSA 284 and subject to RSA 284-A:3, III.

III. With regard to minutes and records of the pari-mutuel commission:

(a) The pari-mutuel commission shall cause to be made and kept a record of all proceedings of public meetings of the pari-mutuel commission pursuant to this chapter. A verbatim transcript of those proceedings shall be prepared by the pari-mutuel commission upon the request of any commissioner or upon the request of any other person and the payment by that person of the costs of preparation. A copy of a transcript shall be made available to any person upon request and payment of the costs of preparing the copy.

(b) The pari-mutuel commission shall keep and maintain a list of all notices it receives under RSA 284-A, together with a record of all actions taken with respect to such notices. A file and record of the pari-mutuel commission's actions shall be open to public inspection provided, however, that the information regarding any applicant whose license or registration has been denied, revoked, or not renewed shall be removed from such list after 5 years from the date of such action.

(c) The pari-mutuel commission shall maintain such other files and records as the pari-mutuel commission determines is necessary.

(d) All information and data required by the pari-mutuel commission to be furnished to it, or which may otherwise be obtained, shall be considered to be confidential and shall not be revealed in whole or in part except in the course of the necessary administration of this chapter, or upon the lawful order of a court of competent jurisdiction, or with the approval of the attorney general, to a duly authorized law enforcement agency.

(e) All information and data pertaining to an applicant's criminal record, family, and background furnished to or obtained by the pari-mutuel commission from any source shall be considered confidential and shall be withheld in whole or in part. Such information shall be released upon the lawful order of a court of competent jurisdiction or to a duly authorized law enforcement agency.

(f) Notice of the contents of any information or data released, except to a duly authorized law enforcement agency pursuant to subparagraphs (d) or (e) of this paragraph, shall be given to any applicant, registrant, or licensee in a manner prescribed by the rules and regulations adopted by the pari-mutuel commission.

#### 284-A:4 Duties of the Sweepstakes Commission.

##### I. The sweepstakes commission shall:

(a) Hear and make recommendations promptly to the gaming oversight authority and in reasonable order all license applications for technology providers.

(b) Collect all license fees imposed upon any applicant and all taxes imposed by this chapter.

(c) Adopt, pursuant to RSA 541-A, such rules as may be necessary to implement this chapter.

(d) Certify net machine income by inspecting records, conducting audits, having its agents on site, or by any other reasonable means.

(e) Establish a central computer system located at the office of the sweepstakes commission linking all electronic games of chance machines to a central mainframe located at the office of the sweepstakes commission to insure control over electronic games of chance. The sweepstakes commission shall establish a bid procedure for such contracts.

(f) Enter into lease agreements with technology providers to provide electronic games of chance machines to operator licensees. These lease agreements shall provide that each technology provider shall supply the quantity and quality of electronic games of chance machines as



determined by an operator licensee in a timely and efficient manner. Each agreement shall also provide that the technology provider shall provide all maintenance and service of its electronic games of chance machines at no additional charge or fee to the state or the operator licensees.

(g) Establish technical standards for approval of electronic games of chance machines, including mechanical and electrical reliability and security against tampering, as it may deem necessary to protect the public from fraud or deception and to ensure the integrity of their operation.

(h) Subject to the provisions of RSA 284-A:8, IX, determine from time to time the number of electronic games of chance machines that any operator licensee may operate.

II. The sweepstakes commission shall have the authority to issue subpoenas and compel the attendance of witnesses, to administer oaths and to require testimony under oath.

III. No later than March 1 in each calendar year, the sweepstakes commission shall provide a report to the gaming oversight authority regarding the generation of revenues of electronic games of chance machines by pari-mutuel licensees.

IV. With regard to minutes and records of the sweepstakes commission:

(a) The sweepstakes commission shall cause to be made and kept a record of all proceedings held at public meetings of the sweepstakes commission. A verbatim transcript of those proceedings shall be prepared by the sweepstakes commission upon the request of any commissioner or upon the request of any other person and the payment by that person of the costs of preparation. A copy of the transcript shall be made available to any person upon request and payment of the costs of preparing the copy.

(b) The sweepstakes commission shall keep and maintain a list of all notices for licenses as technology providers under RSA 284-A, together with a record of all actions taken with respect to such applicants. A file and record of the actions by the sweepstakes commission shall be open to public inspection provided, however, that the information regarding any applicant whose license or registration has been denied, revoked, or not renewed shall be removed from such list after 5 years from the date of such action.

(c) The sweepstakes commission shall maintain such other files and records as the sweepstakes commission determines is necessary.

(d) All information and data required by the commission to be furnished to it, or which may otherwise be obtained, shall be considered to be confidential and shall not be revealed in whole or in part except in the course of the necessary administration of this chapter, or upon the lawful order of a court of competent jurisdiction, or with the approval of the attorney general, to a duly authorized law enforcement agency.

(e) All information and data pertaining to an applicant's criminal record, family, and background furnished to or obtained by the sweepstakes commission from any source shall be considered confidential and shall be withheld in whole or in part. Such information shall be released upon the lawful order of a court of competent jurisdiction, or with the approval of the attorney general, to a duly authorized law enforcement agency.

(f) Notice of the contents of any information or data released, except to a duly authorized law enforcement agency pursuant to subparagraphs (d) or (e) of this paragraph, shall be given to any applicant, registrant, or licensee in a manner prescribed by the rules adopted by the sweepstakes commission.

V. Pending the adoption of rules under RSA 541-A, and notwithstanding RSA 541-A:18, the sweepstakes commission shall adopt interim rules after public hearing and within 30 days after enactment of this chapter. Such interim rules shall automatically expire in accordance with RSA 541-A:19.

**284-A:5 Restrictions on Employment.**

I. No person who has held an interest in or been employed by the holder of a pari-mutuel license or an operator's license or has held an interest in or been employed by a grand hotel or resort hotel shall be employed by the gaming oversight authority, the pari-mutuel commission, the sweepstakes commission, or gaming enforcement division for 2 years from the expiration of such interest or employment. Excluded from this prohibition shall be employees of a pari-mutuel licensee who are employed on an emergency or temporary basis by the pari-mutuel commission for services in connection with a live race or live race meet.

II. No person who holds an interest in or is employed by the holder of a pari-mutuel license or an operator's license, or holds an interest in or is employed by a grand hotel or resort hotel, shall be employed by the gaming oversight authority, the pari-mutuel commission, the sweepstakes commission, or gaming enforcement division.

III. No employee of the gaming oversight authority, the pari-mutuel commission, the sweepstakes commission, or gaming enforcement division shall play an electronic games of chance machine.

IV. No employee of the gaming oversight authority, the pari-mutuel commission, the sweepstakes commission, or gaming enforcement division shall directly or indirectly pay or contribute money or things of value to:

(a) Any candidate for nomination or election to any public office in this state.

(b) Any political party or any committee of any political party in this state.

(c) Any group, committee or association organized in support of any such candidate or political party.

V. No person who was employed by the gaming oversight authority, the pari-mutuel commission, the sweepstakes commission, or gaming enforcement division shall hold an interest in or be employed by the holder of a pari-mutuel license or an operator's license, or hold an interest in or be employed by a grand hotel or resort hotel, for a period of 2 years from the termination of employment by the gaming oversight authority, pari-mutuel commission, the sweepstakes commission, or gaming enforcement division.

**284-A:6 Authorization for Electronic Games of Chance.**

I. A pari-mutuel licensee, grand hotel applicant, or resort hotel applicant shall be authorized to install, operate and conduct electronic games of chance at its pari-mutuel licensee location, grand hotel licensee location, or resort hotel licensee location, subject to the provisions of this chapter.

II. A pari-mutuel licensee, grant hotel applicant, or resort hotel applicant may enter into one or more agreements to manage or participate in the operation of electronic games of chance at its pari-mutuel licensee location, grant hotel licensee location, or resort hotel licensee location; such operator applicant must be licensed under this chapter.

**284-A:7 New Hampshire Electronic Gaming Areas.**

I. There are established 2 New Hampshire electronic gaming areas as follows:

(a) The "White Mountain Tourist Gaming Area" which shall include those Carroll County municipalities and unincorporated towns of Chatham, Jackson, Hart's Location, Bartlett, Hale's Location, Conway, Albany and the Grafton County municipalities and unincorporated towns

of Littleton, Bethlehem, Monroe, Lyman, Lisbon, Sugar Hill, Franconia, Bath, Landaff, Easton, Lincoln, Livermore, Haverhill, Benton, Woodstock, Thornton, Waterville, Campton, Ellsworth, Warren and Piermont.

(b) The "North Country Tourist Gaming Area" shall include all of the municipalities and unincorporated towns of Coos County.

II. The gaming oversight authority shall issue 2 operator's licenses for each of the New Hampshire electronic gaming areas established in paragraph I, provided there are eligible applicants for such licenses.

284-A:8 Licenses, Number of Electronic Games of Chance Machines.

I. No person shall engage in the ownership, possession, transfer, maintenance, repair or operation of an electronic games of chance machine unless such person is licensed in accordance with the provisions of this chapter, local approval as provided in RSA 284-A:13 has been obtained, the gaming oversight authority has adopted temporary rules pursuant to RSA 284-A:2, VII, and the sweepstakes commission has adopted temporary rules as provided in RSA 284-A:4, V.

II. Any pari-mutuel license issued by the pari-mutuel commission following the effective date of this chapter shall not authorize the pari-mutuel licensee to install, operate or conduct electronic games of chance machines until the pari-mutuel licensee is issued an operator's license pursuant to the provisions of this chapter.

III. Any operator applicant shall be licensed as an operator licensee in accordance with the provisions of this chapter prior to engaging in any activity authorized by this chapter.

IV. Any employee of an operator licensee who is directly engaged in the installation or operation of electronic games of chance machines or in any moneys associated with the playing of electronic games of chance machines and all supervisory and managerial personnel, shall be licensed as an electronic games of chance employee in accordance with this chapter prior to engaging in any activity authorized by this chapter.

V. Any technology provider engaged in the business of providing, installing, maintaining or repairing electronic games of chance machines shall be licensed by the gaming oversight authority in accordance with the provisions of this chapter prior to engaging in any activity authorized by this chapter. No technology provider shall be entitled to operate electronic games of chance machines.

VI.(a)(1) On or prior to June 30, 2001, each operator licensee at a pari-mutuel licensee location at which live dog racing is conducted shall be limited to 750 electronic games of chance machines in operation at each such pari-mutuel licensee location.

(2) On or prior to June 30, 2001, the operator licensee at the pari-mutuel licensee location at which live thoroughbred horse racing is conducted shall be limited to 1500 electronic games of chance machines in operation at such pari-mutuel licensee location.

VII. On or prior to June 30, 2001, each operator licensee at a grand hotel licensee location or a resort hotel licensee location shall be limited to 500 electronic games of chance machines.

VIII. The gaming oversight authority shall consider the following factors prior to issuing an operator's license to a grand hotel applicant, resort hotel applicant or applicable operator applicant:

(a) Total distribution of net machine income.

(b) A detailed economic plan for the municipality and the surrounding region where the grand hotel or resort hotel is located with supporting documentation to explain the following:



(1) Quality of jobs including, but not limited to, wages and fringe benefits.

(2) Historical unemployment in the area.

(3) Direct and indirect employment gain.

(4) Impact on the tourism-based economy.

(5) Impact on regional economic development.

(6) Historical and projected household income.

(7) Tourist trends.

(c) A business plan to support the request for electronic games of chance machines.

(d) Market demand for the electronic games of chance machines.

(e) Qualifications of those persons who own or manage the grand hotel applicant or resort hotel applicant.

(f) Regional population.

(g) Vehicle traffic.

(h) Total square footage of the grand hotel or resort hotel facility and the total land acreage of such facility.

(i) Housing availability for employees.

(j) Availability of suitable infrastructure.

(k) Evidence provided by the applicant that the applicant has received local approval as required.

(l) Other information that the authority may require.

IX. Commencing as of July 1, 2001 and thereafter, but no more frequently than at 6-month intervals thereafter, the sweepstakes commission may increase the number of electronic games of chance machines in operation by an operator licensee, subject to approval of such recommendation by the gaming oversight authority. The determination by the sweepstakes commission shall be made after due consideration of the economic conditions present at the time of the determination, including without limitation, the performance of the operator licensee in operating the then existing electronic games of chance machines, the present market conditions and market forecasts and projections, and the financial ability of the operator licensee. Prior to any determination hereunder, the sweepstakes commission shall notify each operator licensee in writing that the sweepstakes commission intends to consider an adjustment in the number of electronic games of chance machines. No such determination shall be made until after notice and a hearing by the sweepstakes commission and specific findings and rulings are made by the sweepstakes commission. The sweepstakes commission shall adopt rules under RSA 541-A, regarding the procedures under this paragraph.

X. In addition to all other enforcement powers it has, the sweepstakes commission may, after notice and hearing, reduce the number of electronic games of chance machines at a pari-mutuel licensee location, grand hotel licensee location or resort hotel licensee location for cause, including the failure to comply with the rules and regulations of the gaming oversight authority, the pari-mutuel commission or the sweepstakes commission.

XI. No pari-mutuel licensee, grand hotel applicant, resort hotel applicant or operator licensee shall alter, construct, remove, or enlarge any structure at the pari-mutuel licensee location, grand hotel licensee location or resort hotel licensee location, as applicable, without the prior approval of the gaming oversight authority, except for the winterization of structures existing as of January 1, 1998.

284-A:9 Application and License Requirement for State License for Electronic Games of Chance.

I. An applicant who has been authorized for an electronic games of chance license shall secure a state license from the gaming oversight authority. An applicant must complete and sign an application on the forms prescribed by the gaming oversight authority. The application shall include the full name, residence, date of birth, and other personal identifying information of the applicant, and if a corporation or other form of business enterprise, the same information shall be provided with respect to each partner, trustee, officer, director, and any shareholder or other holder who owns more than 10 percent of the legal or beneficial interests of such entity.

II. Whenever the gaming oversight authority shall receive an application, including any application under RSA 284-A:10, it shall refer the same to the attorney general who shall conduct an investigation. The investigation may be conducted through any appropriate state or federal law enforcement system and may seek information as to the subject's financial, criminal or business background, or any other information which the attorney general, in his or her sole discretion, may find to bear on the subject's fitness to be associated with the ownership or management of the operation of electronic games of chance machines in New Hampshire, including, but not limited to, the subject's character, personal associations, and the extent to which the subject is properly doing business in the manner in which it purports to operate. When the gaming oversight authority requests such an investigation, the attorney general shall report the results of his or her investigation to the gaming oversight authority within 90 days after the receipt of said request. Notwithstanding any other law to the contrary, the results of any such investigation shall be confidential and shall not be subject to disclosure or to public inspection, except that the attorney general, in the attorney general's sole discretion, shall determine the extent to which and the manner in which said results may be reported to the gaming oversight authority or other state agency or official and, if reported, whether such results are to retain their confidential character; provided, however, that whenever the attorney general conducts such an investigation, the attorney general shall notify the gaming oversight authority whether or not in his or her opinion such person is fit to be associated with participation in the ownership or management of the operation of electronic games of chance machines in this state. The attorney general shall have the authority to conduct an investigation on the attorney general's motion into the background of the license applicant or holder, or any person or entity upon whom the license applicant or holder relies for financial support.

III. In any investigation conducted pursuant to paragraph II, the attorney general or any duly authorized member of the attorney general's staff may require by subpoena or otherwise the attendance of witnesses and the production of such correspondence, documents, books and papers as he deems advisable, and for purposes of this section, may administer oaths and take the testimony of witnesses. No person shall be excused from testifying or from producing any book or paper in any investigation conducted pursuant to paragraph II upon the ground that such testimony or documentary evidence might tend to incriminate such person; provided that if, after a claim of privilege, the attorney general, in writing, orders such person to testify or produce documentary evidence, he or she shall not be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing which he or she,

under oath, disclosed or produced. No person so testifying shall be exempt from prosecution or punishment for any perjury committed by the person in his or her testimony.

IV. The gaming oversight authority shall charge the applicant an application fee of \$100,000 which shall be used to defray the cost of processing the application. If the cost of processing the application exceeds \$100,000, the applicant shall pay the difference. The attorney general shall charge the applicant an investigation fee of \$50,000 which shall be used to defray the cost of the background investigation. If the cost of the background investigation exceeds \$50,000, the applicant shall pay the difference.

#### 284-A:10 Licensure Requirements.

I. No operator's license shall be issued by the gaming oversight authority unless the applicant has proven to the satisfaction of the gaming oversight authority by clear and convincing evidence:

(a) Its financial stability, integrity and responsibility, considering, without limitation, bank references, business and personal income and disbursement schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check records and ledgers.

(b) The integrity of all financial backers, investors, mortgagees, bondholders, and holders of indentures, notes and other evidences of indebtedness of the applicant.

(c) Its good character, honesty and integrity, considering, without limitation, information pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application.

(d) Its business ability and experience in the manufacture, installation, repair, maintenance or operation of electronic games of chance machines, as appropriate, so as to establish the likelihood of a successful and efficient operation.

II.(a) In addition, no operator's license shall be issued by the gaming oversight authority to any applicant unless the applicant has proven to the satisfaction of the gaming oversight authority by clear and convincing evidence that each director, officer or similar principal employee and each direct or indirect owner satisfies the standards for licensure contained in RSA 284-A:10, I.

(b) The gaming oversight authority may, in its discretion, waive the qualification requirement for any such person who is not significantly involved in the activities of the applicant, does not have the ability to significantly influence or control the applicant, or for other good cause.

(c) Except as provided in RSA 284-A:10, II(d), no person who owns, directly or indirectly, legally or beneficially, 10 percent or less of the equity securities or 20 percent or less of the outstanding debt securities of a publicly traded holding company of an applicant for an operator's license shall be required to be qualified pursuant to the provisions of this section prior to the issuance of such a license to the applicant.

(d) If an operator licensee has 25 or fewer holders of its equity securities, either directly or indirectly, legally or beneficially, then each such holder shall satisfy the standards of RSA 284-A:10, II(a).

III. No technology provider's license shall be issued by the gaming oversight authority after recommendation by the sweepstakes commission unless the applicant has demonstrated to the satisfaction of the



gaming oversight authority by clear and convincing evidence that it satisfies the standards contained in paragraphs I and II of this section. The sweepstakes commission shall establish the form of application which must be completed by each applicant for a technology provider's license. Each technology provider license applicant shall be subject to the investigation set forth in RSA 284-A:9 except that all investigatory reports shall be provided to the sweepstakes commission and the gaming oversight authority.

IV. No electronic games of chance employee license shall be issued by the gaming oversight authority unless the applicant has proven to the satisfaction of the gaming oversight authority by clear and convincing evidence that such person satisfies the standards contained in paragraph I of this section.

V. All information and data required by the gaming oversight authority, the pari-mutuel commission, the sweepstakes commission, or gaming enforcement division to be furnished pursuant to this chapter, or which may otherwise be obtained by the gaming oversight authority, the pari-mutuel commission, the sweepstakes commission, or gaming enforcement division in the performance of their duties under this chapter, except information regarding net machine income, shall be considered to be confidential and shall not be revealed in whole or in part except in the course of the necessary administration of this chapter, upon lawful order of a court of competent jurisdiction, or with the approval of the commissioner of safety, to a duly authorized law enforcement agency.

VI. The gaming oversight authority shall charge an application fee of \$50,000 which shall be used to defray the cost of processing the electronic games of chance employee licensing. If the cost of processing the application exceeds \$50,000 for the electronic games of chance employee licensing, the applicant shall pay the difference.

VII. The sweepstakes commission shall charge an application fee of \$50,000 which shall be used to defray the cost of processing the technology provider's license. If the cost of processing the application exceeds \$50,000 for the technology provider's license, the applicant shall pay the difference.

VIII. In addition to all other fees, the sweepstakes commission shall collect from each pari-mutuel licensee, grand hotel applicant, resort hotel applicant, or operator licensee the annual fee of \$50 for each electronic game of chance machine located at the pari-mutuel licensee location, grand hotel licensee location, or resort hotel licensee location and the annual fee of \$10,000 from each technology provider.

284-A:11 Exclusion of Minors.

I. No person under the age of majority shall play an electronic games of chance machine authorized by this chapter.

II. No pari-mutuel licensee or operator's licensee shall knowingly permit a minor to play or participate in any aspect of the play of an electronic games of chance machine.

III. Each violation of RSA 284-A:11, I shall be punishable by a fine of no more than \$1,000 and shall be payable by such person who violates such paragraph.

IV. Each violation of RSA 284-A:11, II shall be punishable by a fine of no more than \$1,000 and shall be payable by the pari-mutuel licensee or operator licensee that is found to have violated such paragraph.

284-A:12 Minimum Distribution of Net Machine Income.

I. The operator licensee at a grand hotel licensee location or a resort hotel licensee location shall, at a minimum, distribute net machine income

generated by such operator licensee at a grand hotel licensee location or resort hotel licensee location as provided in paragraph II of this section excluding the payment set forth in RSA 284-A:12, II(c). All other operator licensees shall distribute net machine income as set forth in paragraph II of this section excluding the payment set forth in RSA 284-A:12, II(d).

II. Subject to the provisions of RSA 284-A:12, I, net machine income generated by an operator licensee shall be distributed and paid as follows:

(a) Sixty-two percent of net machine income shall be paid to the state from which the state shall pay for its costs of regulation and administration; the acquisition and operation of the central computer system; the lease payments due to technology providers; and the balance shall be deposited with the treasurer for funding public education.

(b) Two percent of net machine income shall be paid to the municipality in which an operator licensee operates electronic games of chance machines.

(c) Three and two tenths percent of net machine income generated by an operator licensee at a pari-mutuel licensee location shall be paid to the pari-mutuel commission which will establish a horse racing purse fund for live horse racing and the horse racing purse fund shall be disbursed as follows:

(1) The sum of \$257,000 each year and adjusted annually for inflation to the Jockeys Guild Health and Welfare Trust maintained by Jockeys Guild, Inc. for the sole purpose of providing health and welfare benefits to active, disabled, and retired jockeys in accordance with eligibility criteria established by the Guild; and

(2) The balance of such fund toward purses for live horse racing conducted by the pari-mutuel licensee at such pari-mutuel licensee location.

(d) Three and two-tenths percent of net machine income generated by an operator licensee at a grand hotel licensee location or a resort hotel licensee location shall be paid and disbursed as follows:

(1) One and six-tenths percent of net machine income shall be paid to the travel and tourism joint promotional advertising fund hereby established in the office of the state treasurer, to be used by the office of travel and tourism, division of economic development, department of resources and economic development to promote travel and tourism in the state; and

(2) One and six-tenths percent shall be paid to the pari-mutuel commission which will establish a live racing purse fund for live dog racing purses for live dog racing conducted by a pari-mutuel licensee at its pari-mutuel licensee location.

(e) Thirty-two and eight-tenths percent of net machine income shall be retained by the operator licensee.

III.(a) The pari-mutuel commission shall adopt rules and regulations regarding the disbursement of moneys collected in the horse racing purse fund created in RSA 284-A:12, II(c) to the pari-mutuel licensee which conducts live horse racing for live horse racing purses.

(b) The pari-mutuel commission shall adopt rules and regulations regarding the disbursement of moneys collected in the live racing purse fund created in RSA 284-A:12, II(d)(2) to a pari-mutuel licensee which conducts live horse racing or live dog racing at its pari-mutuel licensee location for purses for such live racing.

IV. All distributions to the state, the pari-mutuel commission, the state treasurer, and the municipality shall be made by the operator licensee within 5 business days after the end of each week in which net machine income is generated. The operator licensee shall pay a fine

equal to the greater of \$50 for each day in which such payments are overdue in whole or in part or interest on the unpaid amount with interest calculated at the annual rate of 10 percent for each day for which the payment due is late. The late payment penalty shall be paid by the operator licensee to the sweepstakes commission. Notwithstanding the foregoing, the fine imposed in this paragraph shall not limit the gaming oversight authority from imposing further sanctions if the sweepstakes commission determines that an operator licensee habitually violates this section.

**284-A:13 Procedures for Adoption by Local Community.**

I. Any town or city in which a pari-mutuel licensee location, grand hotel licensee location, or resort hotel licensee location is situated may adopt the provisions of RSA 284-A, to allow the operation of electronic games of chance, in the following manner:

(a) In a town, the question shall be placed on the warrant of a special or annual town meeting under the procedures set out in RSA 39:3, and shall be voted on a ballot; provided, however, if the question is placed on the warrant at a special town meeting, it shall be the only question at such special town meeting. In a city, the legislative body may vote to place the question on the official ballot for any regular municipal election, or, in the alternative, shall place the question on the official ballot for any regular municipal election upon submission to the legislative body of a petition signed by 5 percent of the registered voters.

(b) The selectmen or city council shall hold a public hearing on the question at least 15 days but not more than 30 days before the question is to be voted on. Notice of the hearing shall be posted in at least 2 public places in the municipality and published in a newspaper of general circulation at least 7 days before the hearing.

(c) The wording of the question shall be substantially as follows: "Shall we adopt the provisions of RSA 284-A, allowing the operation of electronic games of chance at the licensed pari-mutuel, grand hotel, or resort hotel facility located within the town?"

II. If a majority of those voting on the question vote "Yes," RSA 284-A shall apply within the city or town and may not be rescinded by the city or town.

III. If the question is not approved, the question may later be voted upon according to the provisions of paragraph I, provided, however, that the town may consider the question at no more than one special town meeting and the annual town meeting in the same calendar year.

**284-A:14 Inspection of Machines; Penalty for Tampering or Manipulating.**

I. The sweepstakes commission shall, from time to time, test electronic games of chance machines installed at a pari-mutuel licensee location, grand hotel licensee location, or resort hotel licensee location. In conducting such tests, the sweepstakes commission shall use the services of an independent laboratory, the cost of which independent laboratory shall be paid by the technology provider.

II. Any person who, with the intent to manipulate the outcome, payoff or operation of an electronic games of chance machine, manipulates the outcome, payoff or operation of any electronic games of chance machine by physical, electronic or mechanical means, shall be guilty of a felony.

**284-A:15 Electronic Games of Chance Machines.**

I.(a) An operator licensee shall provide to the gaming oversight authority, the sweepstakes commission and, if regulated by the pari-mutual commission, to the pari-mutuel commission, by diagram a description of:



(1) The location of each electronic games of chance machine available for play by the public.

(2) The location of all areas for the storage, maintenance or repair of such machines.

(3) A description of all security measures to be taken for the safeguarding of such machines.

(4) The location and security measures taken for the safeguarding of all moneys, tokens, or other items of value utilized in the use of electronic games of chance machines.

(5) All procedures for the operation, maintenance, repair and inserting or removing of moneys, tokens, or other items of value from electronic games of chance machines.

(b) All of the above shall be approved by the gaming oversight authority prior to commencing the operation of any electronic games of chance machines.

II. No electronic games of chance machine shall be possessed, maintained, exhibited, brought into or removed from a pari-mutuel licensee location, a grand hotel licensee location, or a resort hotel location by any person unless such machine has permanently affixed to it an identification number or symbol authorized by the gaming oversight authority and prior notice of any such movement has been given to the sweepstakes commission.

III.(a) Each operator licensee shall maintain secure facilities for the counting and storage of all moneys, tokens, or other items of value utilized in the conduct of electronic games of chance machines.

(b) All drop boxes and other devices where moneys, tokens, or other items of value are deposited in electronic games of chance machines and all areas wherein such boxes and devices are kept while in use shall be equipped with 2 locking devices, one key which shall be under the exclusive control of the sweepstakes commission and the other under the exclusive control of the operator licensee. Said drop boxes and other devices shall not be brought into the pari-mutuel licensee location, grand hotel licensee location, or resort hotel licensee location or removed from an electronic games of chance machine, locked or unlocked, except at such times and such places and according to such procedures as the sweepstakes commission may require to safeguard such boxes and devices and their contents.

IV.(a) No electronic games of chance machine shall be used to conduct gaming unless it is identical in all electrical, mechanical and other aspects to a model which has been specifically tested by the sweepstakes commission and licensed for use by the sweepstakes commission.

(b) The sweepstakes commission shall, by rule, establish technical standards for approval of electronic games of chance machines, including mechanical and electrical reliability and security against tampering, as it may deem necessary to protect the public from fraud or deception and to ensure the integrity of their operation.

(c) All electronic games of chance machines in operation at a pari-mutuel licensee location shall provide a pay off of at least 87 percent on an average annual basis.

(d) All tickets given as prizes or winnings from electronic games of chance machines must be redeemed for cash within one year after the date of winning. After the expiration of that one year, all such unredeemed tickets shall become property of the state of New Hampshire, notwithstanding any other law to the contrary.

V. An operator licensee who operates electronic games of chance machines shall not be restricted in the days of operation of such machines,

so long as the pari-mutuel licensee has scheduled at least the number of days of racing as required by RSA 284:22-a, II(a)(3). The hours of operation on each day shall be determined by the gaming oversight authority.

VI. The sweepstakes commission shall negotiate and execute agreements with at least 3 technology providers in accordance with reasonable business terms subject to the provisions of RSA 284-A:4, (I)(f). Each operator licensee shall obtain electronic games of chance machines from such technology providers and no others, provided, that no operator licensee shall obtain more than 50 percent of its electronic games of chance machines from any one such technology provider.

VII. The operation of electronic games of chance machines at a grand hotel licensee location or resort hotel licensee location shall not be restricted in the days of operation of such machines. The hours of operation on each day shall be determined by the gaming oversight authority.

VIII. Electronic games of chance machines shall be operated only at times when the public is allowed access to the locations. They shall not be operated during private functions.

284-A:16 Term of License.

I. Any operator's license or technology provider's license issued pursuant to this chapter and any renewal thereof shall be valid for 2 years unless earlier suspended or revoked by the gaming oversight authority.

II. Any electronic games of chance employee license or renewal thereof issued pursuant to this chapter shall be valid for 3 years unless earlier suspended or revoked by the gaming oversight authority.

284-A:17 Presence of the Gaming Oversight Authority and Sweepstakes Commission.

I.(a) The gaming oversight authority may be present at any pari-mutuel licensee location, grand hotel licensee location, or resort hotel licensee location at which electronic games of chance machines are operated at all times when the facility is open to the public.

(b) The operator licensee may be required by the gaming oversight authority or gaming enforcement division to provide such office space and equipment which the commission shall by rule determine is reasonably necessary or proper for them to fulfill their responsibilities.

II. The sweepstakes commission may be present at any time an electronic games of chance machine is opened to remove or insert any drop box, hopper, or other mechanism containing money, tokens, or other items of value. The sweepstakes commission may be present in the count room at any time money, tokens or other items of value utilized in electronic games of chance machines are counted.

284-A:18 Sanction Powers of the Gaming Oversight Authority.

I. The gaming oversight authority shall have the sole and exclusive authority, following appropriate hearings and factual determinations, to impose sanctions against any person for any violation of this chapter or any rule of the gaming oversight authority, the sweepstakes commission, or the pari-mutuel commission adopted under the provisions of this chapter.

II. The gaming oversight authority shall have the authority to impose sanctions upon any person for any violation of this chapter or the rules of the gaming oversight authority, the pari-mutuel commission or the sweepstakes commission as follows:

(a) Revocation or suspension of a license.

(b) Civil penalties as may be necessary to punish misconduct and to deter future violations, which penalties may not exceed \$20,000 for each violation.

(c) Order restitution of any moneys or property unlawfully obtained or retained by a person.

(d) Issue a cease and desist order which specifies the conduct which is to be discontinued, altered, or implemented by the person.

(e) Issue letters of reprimand or censure, which letters shall be made a permanent part of the file of each person so sanctioned.

(f) Impose any or all of the foregoing sanctions in combination with each other.

III. In determining appropriate sanctions in a particular case, the gaming oversight authority shall consider:

(a) The risk to the public and to the integrity of electronic games of chance machine operations created by the conduct of the person.

(b) The seriousness of the conduct of the person and whether the conduct was purposeful or with knowledge that it was in contravention of the provisions of this chapter or the rules of the gaming oversight authority, the pari-mutuel commission or the sweepstakes commission.

(c) Any justification or excuse for such conduct.

(d) The prior history of the person involved.

(e) The corrective action taken by the person to prevent future misconduct of a like nature from occurring.

(f) In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the person.

(g) Notwithstanding the foregoing, in the event that a person receives 3 civil penalties each in the amount of \$20,000 during the term of such person's license, the gaming oversight authority shall either revoke the license for the balance of the term of the license or suspend such license for a period of 60 days, as determined by the gaming oversight authority.

284-A:19 Declaration of Limited Exemption from Operation of Provisions of 15 U.S.C. section 1172. Pursuant to section 2 of an act of Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being Chapter 1194, 64 Stat. 1134, and also designated as 15 U.S.C. sections 1171-1177, the state of New Hampshire, acting by and through the duly elected and qualified members of its legislature, does hereby, in accordance with and in compliance with the provisions of that section 2 of that act of Congress, declare and proclaim that section 2 of that act of Congress shall not apply to any gambling device in this state where the transportation of such a device is specifically authorized by and done in compliance with the provisions of this chapter and any rules adopted pursuant to it, and that any such gambling device transported in compliance with state law and rules shall be exempt from the provisions of that act of Congress.

284-A:20 Legal Shipment of Gaming Devices into New Hampshire. All shipments into this state of gaming devices, the registering, recording and labeling of which has been duly had by the manufacturer or dealer in accordance with sections 3 and 4 of an act of Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being chapter 1194, 64 Stat. 1134, and also designated as 15 U.S.C. sections 1171-1172, shall be deemed legal shipments into this state.

284-A:21 Effect on Other Laws. This chapter shall take precedence over any other law, rule, ordinance or regulation of the state or its political subdivisions to the contrary.

60 New Sections; Department of Safety Gaming Enforcement Division Established. Amend RSA 21-P by inserting after section 11 the following new sections:



21-P:11-a Department of Safety Gaming Enforcement Division.

I. There is established within the department a division of gaming enforcement under the supervision of the commissioner of safety. The division shall be authorized to:

(a) Investigate violations of RSA 284 or RSA 284-A and the rules adopted under the provisions of RSA 284 or RSA 284-A and initiate proceedings before the gaming oversight authority for such violations.

(b) Report the results of any investigation conducted to the pari-mutuel commission, the sweepstakes commission or the gaming oversight authority, as appropriate.

(c) Participate in any hearing conducted by the pari-mutuel commission or the sweepstakes commission.

II. The commissioner of safety shall organize the division into such units as the commissioner deems necessary. The commissioner of safety may employ such personnel as the commissioner deems necessary to fulfill the responsibilities of the division.

21-P:11-b Enforcement Expenditures. Notwithstanding any other provisions of law, the governor and council with the prior approval of the fiscal committee of the general court, upon request from the commissioner of safety may authorize the transfer of general funds to the department of safety to implement and enforce this chapter.

61 License Restricted. RSA 284:16-c is repealed and reenacted to read as follows:

284:16-c License Restricted.

I. Notwithstanding any other provision of law, the pari-mutuel commission shall not issue a license to conduct live thoroughbred horse racing or live harness horse racing pursuant to RSA 284:16 to any applicant if the place where such races or race meets are to be held is within a radius of 40 miles of the place where live thoroughbred horse races or race meets have already been licensed pursuant to RSA 284:16; provided, however, that the pari-mutuel commission may issue a license to conduct live harness racing to the holder of a license to conduct live thoroughbred racing if the live harness racing is conducted at the same place where the live thoroughbred racing is being conducted.

II. Notwithstanding any other provision of law, the pari-mutuel commission shall not issue a license to conduct live dog racing pursuant to RSA 284:16-a to any applicant if the place where the races or race meets are to be held is within a radius of 40 miles of the place where such races or race meets have already been licensed pursuant to RSA 284:16-a

62 Restriction on Gambling. RSA 284:17-c is repealed and reenacted to read as follows:

284:17-c Restriction on Gambling. Except as provided in the introductory paragraph of RSA 284:22, RSA 284:22-a, and RSA 284-A, no licensee who holds running horse races shall at the same facility hold any other kinds of races or permit any other type of gambling except harness horse races and activities licensed by the gaming oversight authority, pari-mutuel commission, or the sweepstakes commission.

63 New Subparagraphs; Grand Hotel Licensee; On-Sale Special License. Amend RSA 178:20, V by inserting after subparagraph (u) the following new subparagraphs:

(v) Grand Hotel. The commission may issue a special license to any person holding an operator's license with respect to a grand hotel licensee location under the provisions of RSA 284-A provided the grand

hotel has an existing liquor license. Such special license shall allow the sale of liquor, wine and beverages in a dining room, function room, gaming room, lounge or any other area designated by the commission, without regard to whether meals are served therein, but only during the time gaming is being conducted under RSA 284-A.

(w) Pari-Mutuel Licensee or Operator Licensee. The commission may issue a special license to a person holding a pari-mutuel license or an operator's license at a pari-mutuel licensee location under the provisions of RSA 284-A provided the pari-mutuel licensee location has an existing liquor license. Such special license shall allow the sale of liquor, wine, and beverages within the pari-mutuel licensee location, including dining room, function room, gaming room, lounge, or any other area designated by the commission, without regard to whether meals are served therein, but only during the time gaming is being conducted under RSA 284-A.

64 New Subparagraph; Travel and Tourism Joint Promotional Advertising Fund Created. Amend RSA 6:12, I by inserting after subparagraph (vvv) the following new subparagraph:

(www) Moneys received under RSA 284-A:12, II(d), which shall be credited to the travel and tourism joint promotional advertising fund established in 284-A:12, II(d).

65 New Subparagraph; Authorized Electronic Games of Chance Machines Not Prohibited. Amend RSA 647:2, V by inserting after subparagraph (c) the following new subparagraph:

(d) Electronic games of chance machines authorized pursuant to RSA 284-A.

66 Position Established; Appropriations.

I. To carry out the financial and educational reporting requirements of this act, there are hereby established within the department of education 6 full-time permanent positions as follows:

(a) One systems development specialist IV, labor grade 25.

(b) One audit administrator, unclassified group L.

(c) Three auditors, labor grade 23.

(d) One administrative assistant, labor grade 15.

II. The sum of \$600,000 is hereby appropriated to the department of education for the biennium ending June 30, 2001, to fund the positions created in paragraph I, including salary, benefits, rent, supplies, and travel. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

III. To carry out the administrative requirements of this act, there is hereby established within the department of revenue administration 2 full-time permanent positions of systems development specialist IV, labor grade 25, and a systems development specialist III, labor grade 22.

IV. The sum of \$2,700,000 for the biennium ending June 30, 2001, is hereby appropriated to the department of revenue administration to fund the costs necessary to implement this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

V. The sum of \$100,000 for the biennium ending June 30, 2001, is hereby appropriated to the department of education to fund the costs necessary to upgrade school districts' computer systems to carry out the reporting responsibilities of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

67 Severability. If any provision of this act or the application thereof to any person or circumstance is deemed invalid, the invalidity does not affect the other provisions or applications of the act which can be given effect without the invalid provisions or applications and to this end the provisions of this act are severable.

68 Effective Date.

I. Sections 45-51 of this act shall take effect on April 1, 1999, and shall apply to returns and taxes and reports due on account of taxable periods beginning on or after January 1, 1999.

II. Sections 52-56 and 58-65 of this act shall take effect July 1, 1999.

III. Section 35 of this act shall take effect July 1, 1999 at 12:01 a.m.

IV. The remainder of this act shall take effect April 1, 1999.

**1999-0559s**

#### AMENDED ANALYSIS

I. This bill:

(a) Increases the rate of the tobacco tax and dedicates \$3,000,000 of annual tobacco tax gross revenues to a tobacco use prevention and cessation fund.

(b) Establishes a uniform education property tax to provide funding for an adequate education.

(c) Increases the rate of the business profits tax and the business enterprise tax.

(d) Adds capital gains to the tax on interest and dividends and increases exemptions under the interest and dividends tax.

(e) Adds a tax on rental of motor vehicles to the meals and rooms tax.

(f) Designates \$4,000,000 annually of tobacco settlement funds received by the state for education funding.

(g) Makes appropriations to the department of education and the department of revenue administration for the purposes of the bill.

II. This bill:

(a) Establishes an educational adequacy and education financing reform commission.

(b) Establishes a system for calculating and disbursing state grants for educational adequacy.

(c) Appropriates funds to the commission for the purposes of this bill.

(d) Provides that all expenses related to catastrophic special education are constitutionally mandated and shall be borne by the state.

III. This bill:

(a) Authorizes electronic games of chance at racetracks, grand hotels and resort hotels upon certain conditions and sets forth criteria for establishing and conducting such games of chance.

(b) Establishes requirements and guidelines for the distribution of net machine income.

(c) Establishes a gaming oversight authority and its authority and duties.

(d) Establishes a division of gaming enforcement within the department of safety.

(e) Establishes gaming areas.

(f) Establishes fee amounts for license applicants.

**1999-0559s**

#### AMENDED ANALYSIS

(g) Authorizes the issuance of special liquor licenses to electronic games of chance locations within grand hotels and pari-mutuel locations that have liquor licenses.



(h) Creates a special fund to be used by the office of travel and tourism for the promotion of travel and tourism in the state.

(i) Establishes live dog racing and horse racing purse funds administered by the pari-mutuel commission.

SENATOR D'ALLESANDRO: I might reiterate that the amendment is really an adaptation of the governor's plan and a further enhancement of the Trombly amendment. First I just want to grab a couple of words from the reverend who I think gives us as spectacular an opening remark as I have ever heard and I truly say this with all due respect, reverend, you are at the top of your game and I appreciate that very much. I want to offer this one of the beatitudes to all of my colleagues, that when Christ gave his sermon on the mountain, he said, "Blessed are those who hunger and thirst for justice sake for theirs is the kingdom of heaven." And try we have hungered and thirsted for justice sake in this Senate and we continue to do that. I offer this amendment knowing full well that there is nothing that will please everyone. That has not been arrived at yet in this imperfect world that we live in, but we present to you a series of items that do basically three things: First, address adequacy with a proper number. That number is \$902,373,000. Secondly, we deliver to the students of New Hampshire, the proper number in terms of arriving at an adequate education. Thirdly, we attempt to lower property taxes for over 80 percent of the state of New Hampshire. Fourthly, we take the burden of taxation and spread it out across the spectrum, not asking any one segment to pay more than any other. The basis of this plan is a statewide property tax. That statewide property tax is at \$6.25 per thousand. That is 25 cents lower than Senator King's offer and \$3 higher than Senator Gordon's. It is the basis of this plan to produce \$416,000,000. I have gone over each element of this plan with every member of this Senate. There are those who accept portions of it and there are those who reject portions of it. In an effort to be as inclusive as possible, we have tried to incorporate in this plan, the best ideas that were brought forth that we could fit in. In the cigarette tax, we have taken Senator Squire's proposal and put it into the plan because it made good sense. Those of you who are opposed to using the total amount **TAPE CHANGE** number. There was a \$20 million number and we have reduced it to \$4 million. The teacher's retirement segment of the dollars that we now give, we pulled that out. We still were able to come up with \$902 million. We think that is constitutional and we think that the plan is constitutional and we think that it satisfies the court. We took the problem and we came up with a plan, brought that plan forward and are looking for a positive result. We make no statement that it is perfection, none whatsoever. We have asked repeatedly, in terms of bringing people in, what would you think would be better? My life has been spent in education. My career began as a coach. As a coach you had to lead the team, but the team was made up of all of its parts. All of its parts had to function together to get the desired results. That is what we must do as a team. There are a lot of people that wanted to play quarterback, but only one gets the job. That is the glory position. There aren't very many who want to play tackle or that want to play guard because they have to be in the trenches and they have to do the dirty work, but the team concept makes it work. I might say that the team concept makes our government work. Now those are the things that we have tried to do in bringing forth this proposal. Address the problem, bring forth a plan, make sure that the plan is adequate and the result...we have said that if the result isn't perfect, and we know that it isn't, there is a commission and that commission can look at the plan and make

those changes to the plan to make it better. The adequacy commission is in place. That is what we did. That is why I am here today to try to articulate my rationale for bringing this to you. You have been patient, it has been a long day. We have heard from a number of Senators, each one brought forth a certain element that they thought was going to make it happen. I applaud them for that. I applaud anyone who brings forth a plan. We should have 24 plans, or 48 plans, or as many plans as it takes to make it happen. This is our...this is my plan, this is our plan in terms of Rick Trombly, myself and others, this is what we bring forth at this time. I appreciate your attention, I know that it has been a long day and thank you, Mr. President.

SENATOR WHEELER: I rise not to bury, Senator D'Allesandro, but to praise him...

SENATOR D'ALLESANDRO: But they just took the tax off of the coffins.

SENATOR WHEELER: You deserve your share of the accolades today. It is a wonderful plan, it is a pity that I can't vote for it, but it is really a good plan. The part of it that I find absolutely impossible to vote for is the video slot machines. I wanted to take a couple of minutes to express why and to tell you that that is why I voted for the sales tax. I don't like a sales tax, but I think that we have to be flexible to some degree. My bottom line is that I can't support video slot machines as state sponsored gambling in New Hampshire. So we could take that \$200 million out and put in a small income tax, put in a small sales tax, there are alternatives. When I was coming up here this morning, 24 hours or so ago, I was listening to New Hampshire Public Radio, and waiting to see what they were going to say about our vote today, and right before it they talked about clusters of cancer. So I thought about this bill, and I said, "yes, cancer cluster." Hmmm. Most of the cancers in this bill would probably respond to treatment. But there is just one that is just too pernicious to risk letting loose. Taxes can be adjusted, they can be altered, they can be repealed, we got rid of the stock in trade tax, were we ever to enact a sales tax we probably could get rid of it in a few years, that can happen with taxes, but mini casinos are forever. It is different betting on horse racing or even dog racing, even though I don't approve of dog racing, but betting on horse racing is different from playing the slot machines. At least you have to wait while the horse has to run around the track. There is a little time span in there from the time that you put your money down and the time in which you find out if you have won or lost. In these video slot machines you can get these \$100 whatever they are...and you put them in there and you can lose it before you have even opened your mouth. It is very depressing. Now, I like horse racing. As I look back, I probably spent far too much of my sophomore year in college at Suffolk Downs, but that was before credit cards, it was before ATM's. I took whatever money I felt I could afford to lose with me, placed my first \$2 bet and won the daily double and I was hooked, but I still only had my \$20 or \$25 with me. So when that was gone, I watched it and I figured out who was good mudder and who wasn't, but I didn't lose the farm, I didn't go into deep depression, I didn't have my family break up, I didn't have to file for bankruptcy. These are the kinds of things that face people who become addicted to slot machine gambling. This is truly the quickest way to lose the much-vaunted New Hampshire advantage. Is it really the right way, the New Hampshire way, to fund public education by preying on the weak? One of the little songs that has been running around in my head this week has a line in it "You don't know

what you got till its gone." I think that's what would happen to us if we put in the slots. We would come to our senses in a few years and we would say, "boy, I liked New Hampshire the way that it used to be." We are never going to get that back if we do it. As for the argument that people ought to be allowed to choose video slots, nobody chooses, people don't choose to lose \$200 million. That is what we are thinking is going to come in. That is a lot of money and that is only the state's share. This is state sponsored, state promoted, addictive behavior. Another argument is that we have to do something. Well don't vote just to send something to the House, these votes are real. They carry a message, they are not written in invisible ink and they will be part of our record as long as our journals last. I, too, have a biblical reference. I thought about this last night and I am really fond of it, "Don't mortgage New Hampshire's future for a mess of pottage." Now if you are not certain about the mess of pottage, I may not know what mess of pottage is, but I know that a mess is when I see one and this is, indeed, a mess. If you are not familiar with the King James version of the bible, the pottage in it was lentil soup. Esau was very hungry and he traded his birth right to his brother Jacob for lentil soup. Well, no matter how hungry Esau was, it wasn't worth his birthright, but at least he didn't fall down dead after eating it. The moral is that you don't put a dish of poison mushrooms on the dinner table because you feel that you have to feed your family something. They might not like mushrooms very much, but at least you take out the kind of mushroom that is going to kill them. Final statement, to have a shot, lose the slots. Thank you.

SENATOR SQUIRES: I want to thank the sponsor of this bill. This is a lot of work and I am particularly grateful for your support of the tobacco money. This is a long bill. It is 49 pages. But for me, there is one line that I wish to talk about. It is on page 44 and it is line 18. For those of you who don't have a copy of the bill, this is what it says, "All electronic games of chance machines in operation at a pari-mutuel licensee location shall provide a pay off of at least 87 percent on an average annual basis." What that means is that you go to one of these machines and you put in a dollar and, over time, you get back 87 cents. That is called a winning. It is an odd winning. Then of course, the rest of it by this elaborate formula disappears in a variety of ways. I ask you, is a government...what kind of a government is that that reaches out selectively to a group of people and says, come and give us a dollar and we will give you back 87 cents. Not only that, within this selective group are people who are poor. We will advertise this, we will call forth people, we will ask them to come and we will take their money. What kind of a government would do that? Then there is the social fallout that begins. We heard hours of testimony. There will be crime, there will be bankruptcies, and there will be divorces. This is not a civics talk. This is not something theoretical. The answer to the question, what kind of government, is us. If you vote for this, an affirmative vote for this bill, in fact, says that is what we want to do. That is not a government that I want to have happen, because I think for me, at a fundamental level, it is wrong. After public safety probably the most essential part of government is public education and the bill asks this to fund 25 percent of the cost of public education in this manner. That I cannot do. I salute my colleagues and I thank you for your attention, it does make an adequate amount of money, there is no question about that, and it also incorporates other issues that we dealt with, but this point on line 18 of page 44 is what this second half of this bill is all about. For me, I can't do it. Thank you.



SENATOR MCCARLEY: Wanting to follow everyone's lead, would applaud the former speakers. I think that for many of us there are parts to this bill that are of concern. I think that there are other things that have been put on the table such as the sales tax and there has even been talk about a consumption tax that could perhaps replace this \$200 million that is a part of our stumbling block. At this point in time, however, I think that it was appropriate that we have this part of the discussion as well. We have had all of the others. I think that it is good that we go ahead and have this and for those of us that feel that we can vote yes on this, because we know that this is not the last vote on any of this, but who truly believe that we are at the end of the day. I truly believe that we are. Now, we can talk about stopping clocks and all of those things, we do that in the normal sort of budget process in those critical votes that we take, we don't control this clock. The only control that we have over this is to find a decision that 13 people can arrive at today and move forward. There are a lot of very good things in the education part of this bill. I think that the number is a critical number, but like Senator Wheeler, I, too, am willing to talk about being flexible. I would hope that we would take this vote and will stay here and keep the conversation going, because I truly believe that is what every one of us promised everybody last November. I believe that is the only true promise that we made, that we would not let what we heard about this morning, about credit ratings or anything, we promised them that we will not let it happen. So if you can't vote for this one, don't go home. Thank you.

SENATOR KLEMM: I would like to speak in favor of the part of the bill on video gambling. I do have a problem with the bottom number, but I would like to speak in favor of the video gambling part of the amendment. I would like to ask the indulgence of the Senate. I would like to read two letters. "Dear Senator Klemm: The town of Salem as represented here by its board of selectmen is deeply concerned with the potential impacts of the taxation alternatives for funding public education currently under consideration by the New Hampshire legislature. We recognize that the peoples representatives are under tremendous stress and are working out a viable alternative to local property tax by the April 1, 1999 court imposed deadline. It is our duty to inform you as the Senate considers legislation that establishes a state income tax, that we view this form of broad based tax as an assault on the sound taxation principles of the people of New Hampshire. We recommend that video gambling, which now transfers considerable resources from New Hampshire residents to out-of-state coffers to be taken up as an intricate part of any revenue raising measure in support of public education. Put into the mix in a way that adequately compensates host communities that are subject to local acceptance. Video gaming can produce the needed revenue from largely out-of-state sources while keeping those New Hampshire dollars already spent on this level of gaming, within the state and working for New Hampshire's youth and its future. There may also be future potential for more revenue that could ease the burdens contemplated by other tax increase increments under discussion that would add to the financial burdens of New Hampshire based business and industry. We strongly urge you to stand up and retention and attraction of the discretionary spending draw of video gaming to fund public education rather than allowing the hand of government to indiscriminately dip into yet another pocket of its people diminishing their standard of living in the process. Your support and allegiance are most appreciated." It is

signed by the chairman of the board of selectmen in the town of Salem, New Hampshire. The second letter that I would like to read, "Dear Senator Klemm: The greater Salem Chamber of Commerce represents over 500 businesses in the southern tier of New Hampshire. As both concerned citizens and taxpayers, we have closely followed the Claremont decision. The need to define adequate education and to quantify that definition and the possible ramifications of the various funding proposals currently put forwarded. The greater Salem Chamber of Commerce, by vote of its board of directors supports educational funding with the installation of electronic games at race tracks provided, 1) the local community receive appropriate revenue as a host community and 2) a binding referendum be required in the local community prior to the operation of these games." Both of which this bill does. "This revenue source avoids additional taxation on the communities, businesses and residents of New Hampshire and provides relief necessary for those communities in our great state which are currently over burdened. We hope that the New Hampshire legislature will pass legislation authorizing the operation of electric games at race tracks as a source of educational funding, that legislation should include a required vote by town residents, percentage of revenue to the host community, strong regulatory control, appropriate tax to the state of New Hampshire, reasonable payout to customers, percentage of revenue dedicated to purses." All six of these this bill does. "Salem has been the host of the largest gambling facility in the state of New Hampshire for over 60 years. This facility has provided tremendous benefit to our community in the form of jobs, community involvement, tourism and economic development. We anticipate this will continue with the combination of racing and electronic games." I would like to address a couple of other points. Senator Squires pointed out that this returns 87 cents. Well we already have gambling in the state, ok? And right now the state lottery returns 50 cents on every dollar. We have dollar scratch tickets, we have \$2 tickets, we have \$3 tickets, we have \$5 tickets, we have Power ball, we have Megabucks, we have Win Cash, we have Pick Three tickets, we have Pick Four tickets, we have Monte Carlo night. I don't need to continue with the rest. But I wish to speak in favor of my community that wishes to step forward and take part and be a solution to this problem. Mr. President, at the hearings in Finance, we asked the business leaders what their alternatives were when they came to the public hearings to speak and they were against this and against that? Here we have a community that is willing to step forward and be part of a solution. Thank you, very much.

SENATOR RUSSMAN: I can see now why it probably would have been easier to be a judge rather than a state Senator. Early on someone had asked me what this might look like when we got done and I said that it might look like a camel, but now I am thinking that it might look more like a platypus by the time that we get done with this thing, if we get done at all. The question about what kind of government does things? I often ask what kind of a government sells alcohol to get people addicted and cause alcoholism? What kind of a government sells cigarettes to kill people and so on and so forth? I think that I particularly don't care for the number, I still think that it is perhaps a bit too high. I am not particularly fond of the gaming part of it, but when some of us were trying to work on this thing yesterday and last evening, we tried to substitute in the notion of a 3 percent sales tax, we dropped votes in doing that,

so we couldn't drop out the gaming issue, because you lost even more votes. So we now know that the income tax is not going to pass because of what the governor has promised to do and I believe that she reiterated that this afternoon, clearly. We have not voted for Senator Gordon's amendment or Senator King's amendment and other amendments. We have essentially rejected the notion at this point of a 3 percent sales tax even as opposed to a 4 percent, because we dropped out votes of trying to put together 13 votes. I think that the train wreck is coming and we are driving the train here. Now, again, given the fact that even perhaps that we don't like the number, we know that the numbers are going to change. I would hope that we wouldn't lose sight that there is a House over there that is going to have to look at this closely, and it is going to look at this very closely, and we know that they are going to want substantial modifications. So we haven't seen the end of this by any means, but we do need to move the ball down the court and we do need to make some progress on this problem in order to avoid the train wreck, if at all possible. I would certainly urge my fellow Senators to think about the idea of which is worse; to allow these things, or to let the schools close and run into the problems that will no doubt will come if we don't come up with a solution. With some reluctance and trepidation, I do urge support of this to try to go forward.

SENATOR BELOW: Thank you, Mr. President. I rise in opposition to this amendment. Principally the aspect of the expansion of video slot machines, casinos to the racetracks and the four grand hotel potentials. My question is what kind of message are we sending to youth of this state, to citizens of this state, that when the times get tough, when we have a hard time facing up to our constitutional duty to provide an equal and honest division of the common burden, that we go for the easy money? We roll the dice, we take the chance, and we gamble in a central aspect of New Hampshire's quality of life. In moving towards a three fold, four fold increase in our reliance on gambling income for funding education, for funding state government responsibilities. We know that there's a growing problem with youth gambling in this state and region. An article from the Christian Science Monitor noted that a recent survey in Vermont found that 53% of students in Junior and Senior High School participated in some form of gambling in the past year. Of those 7% reported personally problems caused by gambling, an indication of a future addiction problem. That's the issue, is what is gambling? For some people it's fine, it's a form of entertainment. I have a libertarian streak in me that says people want to gamble, that's their business, it's really not mine or government's business to say they can't or shouldn't. As a pamphlet from the National **TAPE INAUDIBLE** problem gambling mentions, for most people gamble, the activity as an occasional recreational pursuit, pleasurable, although not often profitable and not a source of personal or family problems. For some, however, the action of gambling provides a feeling of intense excitement, power and hopeful anticipation. These gamblers become dependent upon action in the same way as they might become dependent on the effects of alcohol or other drugs. For them gambling becomes compulsive and the loss of control of gambling leads to mounting personal and family problems. In fact, there's a fairly high degree of correlation between addictive gambling, compulsive gambling and problems with alcoholism and drug addiction. Why is that problem in New Hampshire? Well, part of the problem is we have relied for many years on so called sin taxes and we know that we have a growing problem. The new future initiatives of the New



Hampshire Charitable Foundation points out that we rank very high on a number of indicators of alcohol problems, substance abuse problems. Yet we also rank sixth lowest overall in per capita expenditures for alcohol and other drug services in the United States. We don't have treatment available on demand for people who are looking to get into recovery. There's nothing in this bill or the general fund budget that proposes one penny for prevention and treatment of addiction to gambling. Some people say well we've had gambling for many years in New Hampshire, it's not a big deal, and generally speaking, it's not a big deal; there's only so fast that you can buy a roll of scratch tickets, I suppose. Even today there are people who have a problem with what's going on, even with the lottery. There's people out there earning \$6 or \$7 an hour, \$12,000 or \$15,000 a year income or living on disability benefits or social security who see that gambling is the way to get ahead. They can't afford a car to get to work, so instead of saving their \$25 or \$50 a week of disposal income, they put into the lottery, figuring that if they just hit that lucky number, they're going to have enough money to buy a car. In ten months time, they could have saved enough money to buy a car. The nature of video slots is different and it's been called the crack, cocaine of gambling for good reason, because it is fast action, it's any kind of video game that you can imagine that could be played at these videos casinos, and I call them casinos, because if you go to a casino today... I was in Las Vegas for the NCSL meeting this past summer. I walked through quite a few casinos, there 80%, 90% video slots and the traditional card tables were by and large empty when I was there this summer. You saw people there with their cups full of coins, just running them through the machines. Again for the person who has a budget, goes there, spends it, that's fine. Study after study is showing that on the order of half the revenue from video slots from this kind of activity comes from people with compulsive gambling problems. One study, I believe in Minnesota, showed that 63% of the revenue from video slots came from 2% of the gamblers. Study after study has shown that the people, there's a preponderance of people who become addictive to gambling who are at the low-income scale of our community. People who have a bit of desperation, perhaps in life in trying to find a way to get ahead so they turn to the easy money of lady luck. When I was in Delaware at the CSG meeting this past summer, I stopped across the street from the hotel Dupont at the Delaware's Council on Problem Gambling. I think we heard testimony that it hasn't been a problem in Delaware where they put video slots at the race tracks, when I went there I had to sit and wait for about a half hour because the people who were there were busy with the hotlines. They are funded in part from the state; I think even from the proceeds of the video slots down there. So, they don't take a position on gambling but, when somebody became free, I asked them, is there a problem here, have you see an increase? They said yeah, of course we have seen an increase. Increased number of calls and they said particularly one group that has us really concerned is middle aged housewives, who used to go to Atlantic City once a month, a few times a year on the bus. When the video slots were five minutes from home, they found themselves going down there once a week, twice a week, and four times a week and end up with family break ups, with bankruptcy problems, with overdrawn credit. They end up going to, some of them get to the point of hitting bottom and end up in recovery programs like gamblers anonymous. I picked up this brochure from them at that time. It points out that from gamblers anonymous, point of view, they see their members as having an illness progressive in nature that can never be

cured but, can be arrested. The gamblers anonymous concept is that compulsive gamblers are really very sick people who can recover if they follow to the best of the ability, a simple program, it's a 12-step that's been used in alcoholics anonymous and other groups. I thought it was curious when I got to the end of it, they talk about unique spiritual fellowship, as does AA. At the end they said why as it's used in gamblers anonymous what is the meaning of the word spiritual? Simply stated the word can be said to describe that characteristic of the human mind, which is marked by the highest and finest qualities such as generosity, honesty, tolerance and humility. And I thought that's interesting, I think I've heard words like that before. Where I heard them or remembered them from was in our constitution, Part I, Article 38 says that "A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to justice, moderation, temperance, industry, frugality, and all the social virtues, are indispensably necessary to preserve the blessings of liberty and good government; the people ought, therefore, to have a particular regard to all those principle in the choice of their officers and representatives, and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of government." And again, that same concept is echoed in Part II, Article 83 the Encouragement of Literature, Trades Etc clause which in the very same sentence that starts out talking about "Knowledge and learning" "being essential to the preservation of a free government" and our duty to cherish the schools "in all future periods of this government." It goes on in the very same sentence and says, "to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments." The problem is that we have a terrible track record as a state in, on the one hand, saying we are going to derive a large portion of our revenues, more than any other state in the nation from activities that can be addictive for some people. We get about \$200,000,000 a year from the taxation of cigarettes, alcohol and gambling proceeds. We are proposing to double that here and yet, today, we only spend about \$1 million out of that \$200,000,000 revenue in prevention, support and treatment of addiction. My concern here is that we haven't looked at the social cost of this problem. We know that there are social costs, we know that where there is an expansion of gambling there is an expansion of problem gambling and people who get addicted to it. We bring it closer to home and those people will be in our communities closer to home. Sure, a lot of people go to Foxwood but it is not on a daily basis. There are a lot of facts and figures that we could quote here, but we do know is that this is an extremely regressive form of revenue raising for the state. Perhaps more than almost any other source of revenue. The indications are that the money comes out of the pockets of those least able to pay. It is not an equal and honest division of the common burden. For that reason, I simply cannot support this aspect knowing that it is likely a path of no return. There is a lot of interest in the gambling industry, a lot of their lobbyists up in the gallery, people looking forward to the income tax dying so that we can get on with our business and expand the video slots; and the problem is, that it is not only their entry into New Hampshire, it is an entry, and the door into Massachusetts and Maine, where the pressure will grow; and once we are hooked as the state on the revenue stream, it is going to be very hard to change course. We are going to be back year after year looking for a change in the percent-

ages and we are going to be looking for an expansion of the gambling for more forms and more places throughout the state. It is just not where we should be going. There is another point that I would like to make about this bill. On another matter, which concerns the concept of being honest with ourselves and honest about what we are doing with taxation. Nobody likes taxes. But part of this is an increase in the business enterprise tax. I found it ironic that when the governor came in to testify and presented her proposal, the lead economist that followed immediately after her, was Daphne Kenyon she passed out an article there. In that article she talked about...it was an article about the business enterprise tax. She asked, "Can the business enterprise tax be labeled an income tax?" She answered it as "yes, it is properly considered an income tax." The point of impact of the BET is nearly the same as that of the personal income tax, the BET taxes income with the exception of rental income when it is paid out by the business firms, personal income tax, taxes income when households receive it; thus, the two taxes both tax income but on opposite sides of the factor market. She went on to note that the BET, because it is paid by business, has none of the personal deductions or exemptions which can modify personal income tax burdens to better reflect a household's ability to pay. In fact, that is one of the complaints that we have heard about the BET, that for some small business owners with capital...I mean labor intensive businesses, they end up paying very high percentages of their personal income through the BET. So, I am just pointing out an irony here where we have a governor who says that she will veto an income tax, yet she herself, proposed what her own economists called an income tax. It is a hidden one. It is not direct, so that makes it okay. The costs of gambling are hidden, they are not direct. That seems to make it okay. But the costs are real and we are going to see it in our health and human services budget. We are going to see it in our criminal justice budget and we are going to see it in the cost of bankruptcy; and we are going to see it in domestic violence, we are going to see it in child neglect and abuse. It is wrong and it is not the way to go.

SENATOR RUSSMAN: Senator Rubens, I mean, Senator Below, I am sorry...forgive me please.

SENATOR BELOW: I and my predecessor do agree on this so...and we do sound a little bit alike on it.

SENATOR RUSSMAN: Yes, you do have a common thread in concerned to fashion. In any event, I have heard you make very coaching and compassion elements here virtually on everything that has been proposed today. Is there anything that you can tell us that you would support other than an income tax to help us along on this road?

SENATOR BELOW: I can't see anything that is as equal and honest as the division of the common burden.

SENATOR HOLLINGWORTH: I rise to oppose this legislation primarily because there is no sustainable revenue in this package, there is no equitable revenue source in this package. The statewide property tax is based on property values which we all know do not rise as the rising cost of education and numbers of pupils. So even if all of the other revenue sources preformed as projected, the rate of the statewide property tax will increase over the year as it has jumped 25 cents in the last two weeks. We have seen it come in at \$8.75 and \$3.50. But the other revenue sources will not perform as projected. The BET and the BPT revenues go up and



down with the growth in profits of business, especially the largest firms that pay the lion share of the taxes. The experience of Cabletron which reported losses, reduced payrolls and diverted operations in the midst of a booming economy, should be a warning to us all. In January the BIA warned the House Finance Committee not to over estimate the BET or the BPT revenues in the up-coming biennium. The BIA told the committee that New Hampshire's manufacturers were suffering from slow exports, falling prices, rising costs and slumping profits all because of the increased competition. Now the BIA says that it wants higher business taxes. I think that they were right in January and wrong in March. We should not be increasing costs for businesses, which are already struggling, especially when there are signs that a record economy expansion may be coming to an end. The tax increases in the package would increase the revenues from the BET and the BPT. The tax burden on the businesses by 30 percent. The revenue from the Capital Gains will also go up and down with the business cycle and the stock market and the Capital Gains simply perpetrates our policy of taxing the income of some taxpayers and not others. The I and D and the BET. There is no need for me to explain why I oppose expanding gambling because I think that many of you share my views, but I assure you that when Massachusetts retaliates the revenues from the slot machines will also shrink. I want to remind you that every law enforcement agency in this state from the attorney general, state police, the Police Chiefs Association, the Patrolmen's Association and all of our churches have opposed expansion of gambling. What happens when the fragile and volatile revenue sources fail to meet their projections? Simply we will do what we have always done, increase property taxes. We will have no choice, because we failed to fund an adequate education and we will be taken straight back to court. The plan is a recipe for continuance of abuse of property taxes. Only low and middle-income taxpayers throughout the state will be made to suffer, not just those in property poor towns. I remember when the Claremont suit began, the Democrats were proud to demonstrate bumper stickers that said, "I support the Claremont suit." We saw it as an opportunity to correct injustices and inequities suffered by schools and taxpayers. I remember the Democrats were thrilled when the Supreme Court ruled with the plaintiffs in Claremont I and I remember the Democrats chastised governor Merrill and the Republicans for failing to respond to that decision. I simply cannot reconcile the memories that what we are doing here today, we are not seizing the opportunity, we are shrinking from it, and we are not correcting injustices and inequities, we are perpetrating them and we are playing politics as usual and we should not be doing it at this time.

**SENATOR KLEMM:** Senator Hollingworth, would you believe that the police chief in the town of Salem does not oppose the games at the race tracks and has come out with a written statement on paper that after a five-year study that he would expect to have more problems with the Mall at Rockingham Park then he would from the video poker?

**SENATOR HOLLINGWORTH:** I believe that that is true, but I believe that the Police Chief's Association did oppose and I think that was the majority of the police chiefs and their opinion. While your police chief in Salem agreed with that, we have not heard from the other places where the tracks would be.

**SENATOR TROMBLY:** Senator Hollingworth, as I remember HB 109, there was a component for a \$6 per thousand property tax to be levied

mainly on second homes and businesses; and there was no exemption for second homes or businesses. So in order to raise the money that was projected in HB 109, would not that component of HB 109 suffer the same deficiency that you cited here in this amendment?

SENATOR HOLLINGWORTH: Not true at all, Senator Trombly. In fact, because of the income tax which rises and stays pretty sustained over the time when values go down, that would not be the case. Clearly that the businesses and second homes would be seeing a 15 to 20 percent reduction so that there is no increased burden on property taxes; and it would not be niched up over the period of time, because the income would be rising with inflation.

SENATOR TROMBLY: But it was the \$6 per thousand tax levied on the value of the property. So as that property increased in value, those people would be paying more in their property taxes, is that correct? There wasn't an offset from the income tax, was there?

SENATOR HOLLINGWORTH: Yes there was because people had the Homestead exemptions and that was the offset from the income tax.

SENATOR TROMBLY: I don't think that I made myself clear. If a business were paying a \$6 per thousand property tax, they paid a \$6 per thousand property tax, correct? So, if one year their business were at \$100,000 and the next year it was assessed at \$130,000 they would pay that additional \$6 on that \$30,000, is that correct?

SENATOR HOLLINGWORTH: They would pay the difference, but they are already receiving a reduction, as you know in the bill, they would be receiving a reduction of 15 to 20 percent.

SENATOR TROMBLY: Thank you.

SENATOR COHEN: A lot of questions have been raised about the police chiefs and the effects of gambling on our communities. The question that I was hoping to ask Senator Fred King, because the grand hotels are largely in his area, if he had found concern from the law enforcement people in the communities and the community leaders of his districts where the grand hotels are located as to how they felt about gambling at the grand hotels? I would be interested to know that. Maybe he could speak to this at some point.

SENATOR F. KING: The answer is that I haven't heard from them.

SENATOR FERNALD: I have been looking at this electronic games of chance machine proposal and trying to understand the math. So I would like to tell you what I found out so that you can think about it too. As I understand it, the machines have to have a payout of 87 percent so that of every dollar that goes in at some point over the course of the day, 87 cents go back out to the people who are playing so that the machines take, in the grand scheme of things, is about 13 percent. The state gets 62 percent of the 13 percent, which is 8.06 percent and it is represented to us that that 8.06 percent is about \$200 million. So then the question that I ask myself is, how much do you have to gamble for the state to realize \$200 million at 8.06 percent? The answer is \$2,481,000,000. That is how much money has to pour through these slots for the state to get \$200 million. I think that we are taking about 5000 machines, which means that \$1,369 has to go through every slot every day, 365 days a year for the state to realize its \$200 million. I guess that I have two observations on this. I don't believe the \$200 million because I don't think that much money is going to pour through those slots. I think that

the revenue estimate is way overstated and that we will just end up back here at a later date expanding gambling more to try and get the \$200 million. But let me give the pro-gambling people the benefit of the doubt. Maybe it does bring in \$200 million, which means that we have to gamble \$200.5 billion to get our \$200 million. The total income of all of the people in this state is about \$33 billion which means that we have to gamble 7.5 percent of our income for the state to generate its \$200 million. It is an astronomical amount. Now I know that you are going to say that it is going to come from people out-of-state and I suppose that some of it will, but the idea that we are going to encourage the people of New Hampshire to stuff this much money through a machine and at the end of the day, they have nothing to show for it except for the fact that they have lost their money is really shocking to me. It is not the way for this state to go. When I ran for this office, I told people right up front that I was against an expansion of gambling. I told them, to me, that it was just a question of basic values. One of the values that we try and teach our children, or the value that I try and teach my children, is the value of work. The idea that what we get is what we have worked for. Gambling teaches our children that they can get something for nothing. I think that it is entirely the wrong message. It is a terrible cultural message. We will fundamentally change the nature of our state with this expansion of gambling and I will vote against it. Thank you.

**SENATOR PIGNATLELLI:** I rise in opposition to this amendment and specifically the inclusion of video gambling at the race tracks and the grand hotels. I cannot express how grave a mistake I believe that to be for our state. When is the best time to stop talking? Probably now. A story is told about FDR when he was a young lawyer. He heard his opponent summarize a case before the jury in an eloquent, emotional, but lengthy appeal. Sensing the jury was restless, FDR is reported to have said, "You have heard the evidence and you have also listened to a brilliant orator. If you believe him and disbelieve the evidence, you will decide in his favor. That is all that I have to say." He won. Overstate and bore, understate score. When a baseball empire says strike three, he doesn't have to add, your out, that is what strike three means. Let's not gamble on our children's education. Thank you, Mr. President.

### **Recess.**

### **Senator Cohen in the Chair.**

**SENATOR BLAISDELL:** I rise in support of the D'Allesandro amendment. Everything except the video gaming I despise. Just as pure and simple as that, so let's be up front about it. Everything there I despise. I have been an income taxer for 28 years in this state, that is why I am called "El Bandito" by the Union Leader, they say that I have never seen a tax that I haven't liked. I come from that anti-God, anti-U.S.A area, Keene. So that is on the record so I am not going to back off from that. When I talked to the governor about this, I told her that I had some credibility to go forth with an income tax. Right now, Senator Below, I might have changed my mind after listening to you, but I mean that I will concede with Senator Fernald that he did say that when he ran and I said that before the retired teachers over in Peterborough when I spoke for you, Senator Fernald. But I told them that I disagreed with your stance on video gaming. I am for it. I don't like the statewide property tax, but I will vote for it. I don't like the capital gains tax but if I have to, I will vote for it. I don't like the cigarette tax, but if I have to, I will vote for it. We are all a bunch of hypocrites because we have taken



money from the two greatest killers in the world, booze and tobacco over the years and I haven't heard any of you people tell me that that is the great killer and you are worried about all of these alcohol abusers. None of you have ever come to me and said why are we closing all of these places when these people supposedly become addicted to alcohol? None of you have done that. I have been to Connecticut once in my life. I went down there with the assistant attorney general from New Hampshire. I went down there with the former Senate President, Bill Bartlett and I think Ann Torr was there a couple of others. We went down there to take a look. I didn't walk ten feet into the building without saying "Hi, Junie, how are you?" They were from New Hampshire. Okay. All of them from New Hampshire and taking their money and going there. Then you take the Concord Monitor and then you take the Union Leader and they advertise bus trips to Connecticut or the Mohican Sun at \$5 off. What a bunch of hypocrites. They take that money, but they can be opposed to this when the money could stay in this state and it could be regulated. I am not a gambler. I am not drinker and I don't smoke. If I didn't have some property, I wouldn't be participating in the tax structure in this state. A woman called me the other evening and told me, "I am upset with you, Junie, because I have supported you for the last 28 years in the Senate because you are for gambling." So I asked her if she drinks? She said, "No." I then asked her if she smoked? She said "No." Then I asked her if she bought Mega Bucks tickets? She said "No." Do you buy Powerball tickets? She said "No." Do you go to the racetrack? "No." Do you own a home? "No." Then what the hell do you do to participate in the tax structure of New Hampshire? She couldn't answer that because she does nothing. So that is what we are here for. I don't like what is in this bill, but I have been here long enough to know that it ain't over until it is over. This Senate today ought to pass the D'Allesandro bill and send it over to the House and set up a Committee of Conference and go to work. That is really where the work is done whether you want to believe it or not. I can't believe it. I probably used the wrong words calling the state's Police Association or the Police Chief's Associations a bunch of hypocrites. Did you ever go to one of their Monte Carlo nights where it is poker and chips and everything else? They raise money that way. Have you ever gone to a bingo game in this state with 50 cards in front of a woman who is going like hell over the place to try and put the numbers all over them? Have you ever seen that? Nobody has ever said anything about that. I have been waiting for a call from the Pope. He hasn't called me yet, but I mean probably he will pretty soon. This is wrong. It is not going to hurt the state of New Hampshire. Crime is down in New Hampshire. Crime is down. Crime is down in Delaware, too. If you want to go down through the whole list, it is down. You can shake your head all you want, Senator Below, you are getting just like Senator Rubens now, he always shook his head. I don't like that. I know that I am right and that you are wrong. The crime is not there, I know that, and Delaware today has the strongest gaming commission. They give \$1 million a day to that small state. I am emotional about this because this Senate has got to do something. You have to bite the bullet. You have to put your personal things behind you. I am telling you right now, Senator Below, that it is not going to happen. There will not be an income tax in this state and it isn't going to happen and you had better know it right now. I know it and if you don't hear it, you are wrong. If you don't hear it, Senator Fernald, you are wrong. The governor has said that she will not change. I tried to talk with her for three hours to try and get an appointment with you to talk

with all of your experts. It is not going to happen. She said that they can talk for the next ten years. It ain't going to happen. So you have to get off of that kick and you have to come up here and you have to try and help us put something together to pass it over to the House so that we can get to a Committee of Conference and then we will do it. You can put it together, I have done it 15 times since I have been here. I have voted for things that I have hated with a passion. I voted for the budget last year, which I was chairman of. I hated it along with Senator Hollingworth. I hated it, but I passed it. The governor didn't sign it either, but that is all right, we did the very best that we could with what we had. The \$200 million is a firm figure. In fact, it is a conservative figure. The reason that I did that was because \$200 a machine is very conservative. In Delaware, they did the same thing. They are now getting \$400 a machine. It hasn't hurt crime. So I am asking you, not only for video gaming, but I am asking you to look at Senator D'Allesandro's proposal and get 13 votes in this Senate. Talk about adequacy all you want and make a compromise if you want to, but get it over to the House so that we can get into a Committee of Conference and get on with the work of this state. It's waiting for us because you have a \$6.3 billion budget that you are going to have to work on it. Thank you very much.

**Recess.**

**Senator Blaisdell in the Chair.**

SENATOR F. KING: Thank you, I am not going to try and follow that speech or any of the other speeches actually. I am not going to vote for this bill because I think that it is too much money and I don't want to get my decision on how I am voting mixed up with any argument because I can vote for a video lottery or gaming. It is too much money and I can't vote for it. I am not voting for it.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Trombly.**

**The following Senators voted Yes: McCarley, Trombly, J. King, Russman, D'Allesandro, Klemm.**

**The following Senators voted No: F. King, Gordon, Johnson, Fraser, Below, Disnard, Roberge, Fernald, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, Wheeler, Hollingworth, Cohen.**

**Yeas: 6 - Nays: 17**

**Floor amendment failed.**

Senator McCarley moved to have **HB 112**, increasing the tobacco tax and imposing the tax on all types of tobacco products, laid on the table.

**Adopted.**

#### **LAID ON THE TABLE**

**HB 112**, increasing the tobacco tax and imposing the tax on all types of tobacco products.

**Recess.**

**Out of Recess.**

### SUSPENSION OF THE RULES

Senator Trombly moved that the rules of the Senate be so far suspended as to allow a committee report not previously advertised in the Senate Calendar on **HB 109**, establishing a flat rate education income tax and a statewide education property tax to fund public education and making an appropriation therefor.

A roll call was requested by Senator Francoeur.

Seconded by Senator Krueger.

The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Roberge, Blaisdell, Fernald, Squires, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.

The following Senators voted No: Francoeur, Krueger, Brown.

Yeas: 21 - Nays: 3

Motion adopted by the necessary 2/3 vote.

**HB 109**, establishing a flat rate education income tax and a statewide education property tax to fund public education and making an appropriation therefor. Finance Committee. Ought to pass. Senator Hollingworth for the committee.

**SENATOR HOLLINGWORTH:** The committee on Finance would like to be able to present an amendment for **HB 109** to be presented to the Senate, so we ask for an ought to pass motion on it.

**Adopted.**

Senator Below offered a floor amendment.

Sen. Hollingworth, Dist. 23

Sen. Below, Dist. 5

Sen. F. King, Dist. 1

Sen. Squires, Dist. 12

Sen. Fernald, Dist. 11

1999-0574s

04/09

### Floor Amendment to **HB 109-FN-A-LOCAL**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to tax reform, local property tax relief, and education funding, and making an appropriation therefor; and repealing the business enterprise tax.

Amend the bill by replacing all after the enacting clause with the following:

1 Declaration of Need and Purpose.

I. Recognizing the duty imposed by part II, article 83 of the New Hampshire constitution to ensure proper diffusion of knowledge and learning throughout the state, the general court finds that measures heretofore authorized for financing primary and secondary education inadequately comply with the mandate of the constitution. More particularly, the general court finds that reliance upon taxation of property assessed locally on differing bases and at differing rates:



(a) Fails to achieve the goal of a constitutionally adequate education for each of the state's youth, in that expenditures for every child's public education depend on the taxable wealth per pupil in the community where the child resides and, because of the great disparity of taxable wealth among the communities, amounts raised to meet the basic expenses of public education vary widely, thereby creating inherent inequality; and

(b) Imposes disproportionate burdens of taxation on persons having low and moderate income in each community and especially on such persons in communities having lesser amounts of taxable wealth per pupil, as in such communities heavier property tax burdens are imposed in order to raise sums sufficient to meet the costs of basic public education, against the spirit and intent of part I, article 12 and part II, articles 5, 6, and 83 of the New Hampshire constitution.

II. The purpose of this act is to more nearly satisfy the requirements of part I, article 12 and part II, articles 5, 6, and 83 of the New Hampshire constitution by establishing a system for:

(a) Financing the basic costs of public primary and secondary education sufficient to provide a constitutionally adequate education on an equal basis throughout the state, thereby redressing the presently existing inequality of educational financing and opportunity;

(b) Financing such basic costs from a source other than the local property tax alone, thereby alleviating the disproportionate burden presently borne by persons of low and moderate income; and

(c) Maintaining local control of public education by distributing adequate education funding grants to the school districts of the state.

(d) Implementing an interim plan for adequate education funding for the biennium ending June 30, 2001 that provides a transition to a more comprehensive and accurate funding plan to be established for the next biennium, with advice from the adequate education and education financing reform commission.

III. The general court finds that:

(a) The general good, benefit and welfare of the state is advanced by promoting home ownership and that a total exemption of primary residences (homesteads) from the statewide education property tax is reasonable, especially when resident homeowners will be subject to the education income tax that will become the primary source of revenue to replace the local school property tax;

(b) It is reasonable and just that renters, who do not directly pay property taxes, be allowed a renter's credit against their education income tax liability that approximates the statewide education property tax paid by the owner of the rental dwelling unit;

(c) A uniform standard exemption of income from the education income tax for all taxpayers and dependents is a just, reasonable and proportionate means to assure that each taxpayer has the ability to earn a minimal subsistence level of income before being subject to the burden of income taxations, and that single heads of households are an appropriate class of people for whom an additional modest exemption from the education income tax is just and reasonable; and

(d) To promote industry, frugality and a positive work ethic, a modest exemption from the education income tax on income earned by dependents is just and reasonable.

2 New Chapters; Statewide Education Property Tax; Education Income Tax. Amend RSA by inserting after chapter 76 the following new chapters:

## CHAPTER 76-A

## STATEWIDE EDUCATION PROPERTY TAX

76-A:1 Definitions. In this chapter:

I. "Assessing official" means the assessing authority of any town, city, or unincorporated place.

II. "Commissioner" means the commissioner of the department of revenue administration.

III. "Department" means the department of revenue administration.

IV. "Dwelling" means the house or habitation for a natural person or persons consisting of a structure that provides shelter from the elements and contains at minimum a space for preparation and consumption of food and for repose on a daily basis.

V. "Education trust fund" means the education trust fund established in RSA 198:39.

VI. "Equalized assessed value" or "equalized assessed valuation" means the sum of the total valuation of each class of property in a municipality reported pursuant to RSA 21-J:34 adjusted by excluding utility property, the value of property subject to tax under RSA 82 and the value of property exempted pursuant to RSA 72:37-b, 72:62, 72:66, and 72:70 and equalized by the commissioner according to the equalization method specified in RSA 21-J:9-a.

VII. "Municipality" means a city, town, or unincorporated place.

VIII. "Homestead" or "homestead property" means the dwelling owned by a claimant or in the case of a multi-unit dwelling, the portion of the dwelling, which is used as the claimant's principal place of residence and the claimant's domicile for purposes of RSA 654:1. "Homestead" shall not include land and buildings taxed under RSA 79-A or land and buildings or the portion of land and buildings rented or used for commercial or industrial purposes. In this paragraph the term "owned" includes a vendee in possession under a land contract and one or more joint tenants or tenants in common.

IX. "Tax" means the statewide education property tax imposed pursuant to RSA 76-A:2.

X. "Taxable real estate" means property subject to tax under RSA 72 and utility property, except property subject to tax under RSA 82 and homestead property.

XI. "Tax collector" means the appointed or elected collector of taxes for a municipality.

XII. "Taxpayer" means any person subject to tax under RSA 72 and RSA 73 owning taxable real estate.

XIII. "Tax year" means the twelve month period beginning April 1 and ending March 31 of the succeeding calendar year.

XIV. "Utility property owner" means any person, partnership, limited liability company, association, corporation or other entity, their trustees or receivers appointed by any court, owning utility property.

XV. "Utility property" means all real estate, buildings and structures, machinery, dynamos, apparatus, poles, wires, fixtures of all kinds and descriptions, and pipe lines located within New Hampshire employed in the generation, production, supply, distribution, transmission, or transportation of electric power or natural gas, crude petroleum and refined petroleum products or combinations thereof, water, or sewage subject to tax under RSA 72:6, 72:7 and 72:8; provided that no electric power fixtures which would otherwise be taxed under this chapter shall be taxed under this chapter if they are employed solely as an emergency source of electric power. "Utility property" shall not include:

(a) Water and air pollution control facilities exempt from local property taxation under RSA 72:12-a;

(b) Any other property which is not subject to local property taxation.

76-A:2 Statewide Education Property Tax Imposed. A statewide education property tax is imposed on all taxable real estate in the state as follows:

I. On the effective date of this chapter the rate of tax shall be 0.5 percent of equalized assessed valuation for the first tax year.

II. For subsequent tax years, the rate of tax shall be set through legislative action each year on or before June 30, but shall continue at the prior year's rate if no action is taken by the legislature.

III. The commissioner shall equalize the rate of taxation determined pursuant to paragraphs I or II for each municipality by multiplying such rate by the municipality's equalization ratio determined according to RSA 21-J:9-a, except that for municipalities which have undergone a total revaluation of taxable property within the prior year the commissioner shall use the actual value of such property as determined by such revaluation.

76-A:3 Commissioner's Warrant.

I. The commissioner shall annually calculate the portion of tax to be raised by each municipality by multiplying the equalized rate in RSA 76-A:2, IV by the total assessed value of all taxable real estate except utility property in the municipality.

II. The commissioner shall issue a warrant under the commissioner's hand and official seal for the amount computed in paragraph I plus any amount added pursuant to paragraph III to the selectmen or assessing officials of each municipality at the same time as tax rates are set under RSA 21-J:35 directing them to assess such sum and pay to the municipality for the use of the school district or districts or to the department for deposit in the education trust fund in RSA 198:39 such sums and at such times as may be prescribed for other taxes assessed by such selectmen or assessors of the municipality.

III. In calculating the tax to be assessed pursuant to the warrant, the commissioner may assess a sum not exceeding 5 percent more than the amount of the tax calculated in paragraph I for the purpose of answering any abatements that may be made.

IV. The commissioner shall report the total amounts assessed to each municipality to the governor, speaker of the house of representatives, president of the senate, state treasurer and department of education on or before September 30.

76-A:4 Homestead Exemptions.

I. The homesteads of qualifying taxpayers are exempt from the tax due under this chapter.

II. A qualifying taxpayer is an individual who:

(a) Is subject to the education income tax under RSA 76-B or qualifies for a local property tax exemption under RSA 72:39-a.

(b) On April 1 owns a homestead or interest in a homestead subject to the education property tax; and

(c) Files a claim certifying under the pains and penalties of perjury that such taxpayer qualifies under subparagraph (a) and (b) with the selectmen or assessing officials on or before July 30, 2000 or, in subsequent years, May 1 of the tax year for which claim is made. Claims filed after July 30, 2000 or May 1 of subsequent years shall not be considered timely for the current year, but shall be considered filed for the following tax year.



III. Upon receipt of a claim for a homestead exemption under RSA 76-A:4, the selectmen or assessing officials shall review the claim and shall grant or deny the claim in writing by September 1<sup>st</sup> following receipt of the claim. Failure of the selectmen or assessing officials to respond shall constitute acceptance of the claim. Accepted claims shall continue from year to year without necessity for refileing unless there is a change in ownership, or use of the property. Accepted claims may at any time be revoked for any tax year or portion thereof following the occurrence of one or more of the following events:

(a) The claimant fails to file a return as required under RSA 76-B:6 within one year following the close of the tax year for which exemption is claimed; or

(b) The claimant is no longer qualified for local property tax exemption under RSA 72:39-a; or

(c) The claimant is no longer qualified under the definition of homestead in RSA 76-A:1, VII due to a change in ownership or use.

IV. Claims shall be made on forms prescribed by the commissioner and provided to each municipality.

V. The following shall apply to the determination of the amount of property value exempted relative to a homestead which is part of a single tax parcel upon which is located other dwelling units not owned or occupied by the taxpayer or other significant non-homestead property:

(a) If the tax parcel includes property used for business or other non-residential use, the exempt homestead amount shall include in addition to the actual homestead the lesser of 1,000 square feet of floor area of such non-homestead property or \$25,000 of equalized assessed valuation, except that family owned and operated farms which are not owned by a business entity or held in the name of a non-natural person shall be eligible for the full homestead exemption on all property not assessed under RSA 79-A.

(b) If the tax parcel includes other dwellings or dwelling units, the value of the homestead exemption relative to the claimed homestead shall be determined by the assessing official as follows:

(1) Divide the value of the tax parcel by the number of dwelling units; or

(2) If the square footage of each dwelling unit is known, multiply the value of the tax parcel by a fraction consisting of the square footage of the claimed homestead divided by the total square footage of all dwelling units in the parcel; or

(c) In lieu of the methods of determining the amount of homestead exemption in subparagraph (a) or (b), a taxpayer may present competent evidence of a greater proportion of exempt value to the assessing officials. In such instance the taxpayer bears the burden of proving the claimed exemption by the preponderance of the evidence.

VI. If a taxpayer purchases a homestead after April 1 for which no homestead exemption was claimed by the previous owner, the taxpayer may apply to the department for a refund of statewide education property tax previously paid on the homestead, but for which no application was made. The amount of such refund shall be apportioned according to the number of days in the tax year the taxpayer owned and occupied the homestead. Claims by taxpayers purchasing homestead property shall be filed with the inventory of property transfer required to be filed with the municipality pursuant to RSA 74:18. The selectmen or assessing officials shall, within 30 days of filing of the referral claim, accept or deny it and, if accepted, notify the department. The department shall certify the amount of such refund to the state treasurer for payment from the education trust fund created by RSA 198:39.

VII. Manufactured housing as defined in RSA 674:31 qualifying as homestead property and sited on land not owned by the claimant shall be eligible for the homestead exemption based on the value of such manufactured housing without the land.

76-A:5 Time of Assessment and Payment. Except as provided in this chapter with respect to utility property, the tax shall be deemed assessed on April 1 in each year and is payable at the same time or times as the local property tax assessed by the municipality.

76-A:6 Collection. The assessing officials for each municipality shall make a list of all taxes by them assessed against property under their hands and seals to the tax collector, directing the tax collector to collect the statewide education property taxes along with other property taxes. It shall be listed as a separate line on the municipal property tax bill. Upon application by the assessing officials, the commissioner for good cause may extend the time for delivery of the statewide education property tax warrant.

76-A:7 Remedies for Collection. The statewide education property tax may be collected by all of the means and methods provided by law for the collection of property taxes.

76-A:8 Interest and Charges for Nonpayment. Nonpayment of the tax shall incur the same charges and interest as are imposed by law for nonpayment of local property taxes. Such charges and interest shall be payable to the municipality.

76-A:9 Abatement. The tax may be abated in the same manner as provided by law for abatement of local property taxes. Municipalities shall be reimbursed for the amount of such abatements on an annual basis, or at some more frequent interval at the discretion of the commissioner. Such reimbursement shall be payable by the state treasurer from the education trust fund created by RSA 198:39 upon certification of the amount of reimbursement by the commissioner to the treasurer.

76-A:10 Liability of Cities and Towns. Each municipality shall be liable to the state for all taxes lawfully collected in such municipality.

76-A:11 Payment to State. Each municipality shall cause its tax collector to certify such information as the state treasurer shall require, and shall cause its treasurer to pay over to the state treasurer, less any payments due to the municipalities' school district or districts from the state treasurer under RSA 198:42 and any amounts retained by the municipality under RSA 76-A:12, 25 percent of the tax assessed by the municipality on or before each of the following dates: July 1, October 1, January 1, and April 1.

76-A:12 Computation for Costs. A municipality may retain for its unrestricted use 2 percent of the amount of tax collected by it as compensation for the costs of collecting such taxes and administering homestead claims and assessments. Such amount shall not be included in the amount payable by the municipality to the state treasurer under RSA 76-A:11. In addition municipalities may keep any interest earned on taxes that are collected but not due and remitted to the state treasurer, as additional compensation for the costs of collection.

76-A:13 Extents. The state treasurer may also issue an extent for the amounts of all taxes not remitted by any municipality as provided in this chapter.

76-A:14 Supplementary Bond of Collector. Whenever the commissioner considers it necessary, a tax collector may be required to furnish a further and additional bond beyond that required by other provisions of law, with sureties, in such form and amount as the commissioner approves. The additional premium costs shall be paid by the state.

### Utility Property

76-A:15 Utility Property; Persons Liable. The tax imposed by this chapter shall be assessed upon each person with an ownership interest in utility property, in the proportion that such person's ownership interest bears to the entirety of the ownership in the property.

76-A:16 Determination of Utility Property. On or before December 1 of the tax year, the commissioner shall determine the value of utility property for the purposes of this chapter by appraising such property at its full and true value. Notice of such determination shall be given to the taxpayer within 15 days of the commissioner's determination.

### 76-A:17 Returns and Declarations.

I. On or before January 15 each tax year, each utility property owner shall file with the commissioner of revenue administration, on a form prescribed by the commissioner, a return based on the valuation for April 1 of the prior year. The return shall be accompanied by the payment of such amount as has not been prepaid in accordance with paragraph III of this section. If the return shows an additional amount to be due, such additional amount is due and payable at the time the return is filed. If such return shows an overpayment of the tax due, a credit against a subsequent payment or payments due, to the extent of the overpayment, shall be allowed.

II. On or before April 15 of each year, each utility property owner liable to pay the tax imposed by this chapter shall file with the department, on a form prescribed by the commissioner, a statement setting forth the amount of such person's ownership interest as of April 1. The statement shall include such additional information as the commissioner shall require and shall be signed by an authorized representative, subject to the pains and penalties of perjury.

III. At the time the statement required by paragraph II is filed, each person liable for the tax shall, in addition, file a declaration of the estimated tax to be assessed as of April 1 in the current taxable period, based on the tax assessed for the preceding taxable year, accompanied by payment of 1/4 of the estimated tax due. Additional payments of 1/4 of the estimated tax shall be made on June 15, September 15 and December 15.

IV. As of June 1 of each year the principal owner of utility property shall file a list of the changes made to the utility property since the prior April 1. This statement shall include such additional information as the commissioner shall require and shall be signed by an authorized representative, subject to the pains and penalties of perjury.

V. Taxes and estimated taxes not paid when due shall be subject to appropriate penalties and interest under RSA 21-J.

### 76-A:18 Records.

I. Every person liable for tax under this subdivision shall:

(a) Keep such records as may be necessary to determine the amount of such person's liability under this chapter.

(b) Preserve such records for the period of at least 3 years or until any litigation or prosecution under this chapter is finally determined.

(c) Make such records available for inspection by the commissioner or authorized agents, upon demand, at reasonable times during regular business hours.

II. Whoever violates any of the provisions of this section shall be subject to the penalties imposed under RSA 21-J:39.

### 76-A:19 Utility Property Administration.

I. The commissioner shall collect the taxes, interest, additions to tax and penalties relative to the tax on utility property owners as provided under this subdivision. The commissioner shall determine the expense



of administration of this subdivision and shall certify and pay over to the state treasurer for deposit in the education trust fund established by RSA 198:39 the amount of remaining balance of the funds collected under this subdivision after the expenses of administration have been deducted.

II. The commissioner is authorized to contract for the services of utility appraisers as needed for the proper administration of this subdivision. Such contract expenses shall be deemed an expense of administration.

III. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

(a) The administration of the tax imposed on utility properties under RSA 76-A:2 and this subdivision;

(b) The valuation of utility property required under RSA 76-A:16; and

(c) The recovery of any tax, interest on tax, or penalties imposed on utility property under this chapter.

IV. The commissioner may institute actions in the name of the state to recover any tax, interest on tax, additions to tax or the penalties imposed on utility property by this chapter.

V. In the collection of the tax imposed on utility property by this chapter, the commissioner may use all of the powers granted to tax collectors under RSA 80 for the collection of taxes. The commissioner shall also have all of the duties imposed upon the tax collectors by RSA 80 that are applicable to the commissioner. The provisions of RSA 80:26 shall apply to the sale of land for the payment of taxes due under this chapter, and the state treasurer is authorized to purchase the land for the state. If the state purchases the land, the state treasurer shall certify the purchase to the governor, and the governor shall draw a warrant for the purchase price out of any money in the treasury not otherwise appropriated.

76-A:20 Utility Property Valuation Appeals. Utility property taxpayers aggrieved by the determination by the commissioner of the value of utility property pursuant to RSA 76-A:16 may appeal such valuation within 30 days of notification of such determination to the board of tax and land appeals or the superior court of the county in which the taxpayer resides or has a place of business. Appeals other than appeals of valuation shall be made according to the procedure and subject to the time limits provided for other taxes administered by the department under RSA 21-J.

76-A:21 Disposition of Taxes. All funds received by the state treasurer under the provisions of this chapter shall be deposited in the education trust fund established by RSA 198:39.

76-A:22 Local Property Taxes for Residual Expense of Education. Municipalities are hereby authorized to assess and collect property taxes locally, under general provisions of law, to meet budgeted expenses of education not funded through distributions from the education trust fund under RSA 198:39 or the moneys raised under this chapter.

76-A:23 Appeals of Homestead Exemptions.

I. Whenever the selectmen or assessing officials refuse to grant a taxpayer a homestead exemption, or grant an exemption less than the amount claimed by the taxpayer, or the taxpayer is aggrieved by a determination by the assessing official under this chapter, the taxpayer may appeal in writing, on or before March 1 following the date of notice of tax under RSA 72:1-d, to the board of tax and land appeals.

II. When a taxpayer appeals the denial of a claim to the board of tax and land appeals, the board may reverse or affirm, wholly or partly, or

may modify the decision brought up for review when there is an error of law or when the board finds the selectmen's or assessing official's action to be arbitrary or unreasonable.

## CHAPTER 76-B

### EDUCATION INCOME TAX

76-B:1 Definitions. In this chapter:

I. "Consumer price index" means the most recent available consumer price index for all urban consumers published by the United States Department of Labor.

II. "Department" means the department of revenue administration.

III. "Education trust fund" means the education trust fund established in RSA 198:39.

IV. "Individual" means a natural person, including any individual who is a partner in a partnership as to such person's share of the partnership income and any individual who is a sole proprietor as to such person's income as a sole proprietor.

V. "New Hampshire modified gross income" means New Hampshire modified gross income as determined in RSA 76-B:3.

VI. "New Hampshire taxable income" means New Hampshire taxable income as determined in RSA 76-B:3.

VII. "Nonresident individual" means an individual who receives wages, self-employment, or unearned income for the taxable year from sources in this state, who maintains his or her domicile outside the state.

VIII.(a) "Resident fiduciary" means:

(1) The executor or administrator of the estate of a decedent who at death was domiciled in this state;

(2) The trustee of a trust created by will of a decedent who at death was domiciled in this state; or

(3) The trustee of a trust created by, or consisting of property of, a person domiciled in this state.

(4) The trustee of a trust the property of which includes a business organization as defined in RSA 77-A:1, with business activity in New Hampshire as defined in RSA 77-A:1.

(5) The trustee of a trust that has at least one beneficiary who is a resident individual, where, in the case of an individual, the trustee of the trust is a resident of New Hampshire or, in the case of a corporation or other business entity, has a place of business in New Hampshire.

(b) "Resident fiduciary" shall not include the trustee of any trust which is taxable as a corporation under the United States Internal Revenue Code, and shall not include a trust to the extent it is considered to be a grantor trust pursuant to sections 671-679 of the United States Internal Revenue Code.

IX. "Resident individual" means:

(a) An individual domiciled in the state; or

(b) An individual who maintains a permanent place of abode within the state and spends more than 183 days of the taxable year within the state.

X. "Taxable year" means the calendar or fiscal year or portion thereof which the taxpayer uses for federal income tax purposes under the United States Internal Revenue Code.

XI. "Taxpayer" means any individual or fiduciary subject to the provisions of this chapter.

XII. "Unearned income" means any income which is not wage or self employment income, including but not limited to capital gains,

distributions from S corporations, partnerships, limited liability companies or other similar entities, dividends, interests, rents and royalties.

XIII. "United States Internal Revenue Code" means the United States Internal Revenue Code of 1986 as amended, including the United States Department of the Treasury's regulations. The forms and procedures of the United States Internal Revenue Service may be used by the commissioner of revenue administration in formulating rules for adoption under RSA 541-A. This definition shall be operative unless and until a specific statutory exception to its adoption is provided in this chapter, or until the application of one of its provisions is held to violate the New Hampshire constitution.

76-B:2 Imposition of Tax. A tax is imposed upon every resident and nonresident individual and upon every resident fiduciary at the rate of 3.5 percent of New Hampshire taxable income as determined in RSA 76-B:3. A 60 percent majority of those present and voting of each house of the general court shall be necessary to increase the tax rate under this section above 4 percent of New Hampshire taxable income.

76-B:3 New Hampshire Taxable Income.

I. "New Hampshire taxable income" means, for any taxable year:

(a) In the case of a resident or nonresident individual, the individual's New Hampshire modified gross income, as defined in paragraph II of this section, less the following:

(1) An additional exemption of \$11,000 for the taxpayer and an additional exemption of \$11,000 for the taxpayer's spouse if a joint return is made, provided that the taxpayer or spouse is not claimed as a dependent on another taxpayer's federal income tax return or New Hampshire income tax return; and

(2) An additional exemption of \$3,000 for each dependent to which the taxpayer is entitled for federal tax purposes under the United States Internal Revenue Code, provided that the dependent is not claimed as a dependent on another person's federal income tax return or New Hampshire income tax return. A person who is claimed as a dependant under this subparagraph and who has earned income from wages, self employment income, or farm income which is taxable under this chapter, shall be entitled to an exemption of \$3,000 of such earned income on that person's New Hampshire income tax return; and

(3) An additional exemption of \$3,000 for a taxpayer entitled to a head of household status for federal tax purposes under the United States Internal Revenue Code.

(b)(1) In the case of a resident fiduciary, the amount shown as total taxable income on the fiduciary's United States fiduciary income tax return:

(A) Increased by:

(i) Any interest or dividend income on obligations or securities of another state of the United States; and

(ii) Any interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent exempted from the federal income tax; and

(B) Decreased by interest on, and dividends on securities attributable to the interest on, the direct obligations of the United States government.

(2) For a resident fiduciary with at least one beneficiary that is not either a resident individual or another resident fiduciary, the amount of income derived by application of subparagraph (1) shall be multiplied by a fraction, the numerator of which is income properly



accumulated for the benefit of resident individuals or resident fiduciaries and the denominator of which is all income property accumulated.

(c) The exemptions allowed under this paragraph shall be in place for the first year of the tax only. The commissioner of revenue administration shall increase the exemption allowed in each succeeding year by an amount which equals the percentage increase in the consumer price index for a prior annual period established by rule by the commissioner, and rounded to the nearest \$10.

II. "New Hampshire modified gross income" means, for any taxable year, the amount of the taxpayer's adjusted gross income for federal income tax purposes under the United States Internal Revenue Code:

(a) Decreased by:

(1) Interest on, and dividends on securities attributable to interest on, the direct obligations of the United States government; and

(2) The amount of income taxable under this chapter which is also taxed as business profits under RSA 77-A.

(b) Increased by:

(1) Any interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent exempted from the federal income tax; and

(2) Any interest or dividend income on obligations or securities of another state of the United States.

76-B:4 Tax; When Due. Subject to the provisions of this chapter concerning the withholding of tax and estimated tax declarations, the tax imposed by this chapter shall be deemed to be assessed and due and payable on the fifteenth day of the fourth month following the close of the taxpayer's taxable year.

76-B:5 Credits. The following credits are allowed against the tax due under this chapter:

I. Taxes withheld pursuant to the provisions of this chapter.

II. Estimated tax payments made pursuant to this chapter.

III. A renter's credit of \$300 on a dwelling unit subject to RSA 76-A rented by the taxpayer as his or her primary residence for the entire year prorated for each full month of residence or alternatively, a renter's credit which is equal to the product of the local assessed value of the rented dwelling unit times the municipality's equalization ratio determined according to RSA 21-J:9-a times the rate of taxation in RSA 76-A:2 for the concurrent tax year, provided the taxpayer presents competent evidence of such value of the dwelling unit. Taxpayers claiming the alternative renter's credit shall bear the burden of proving the claimed value of the rented dwelling unit by the preponderance of the evidence. Such alternative credit claims shall be on forms prescribed by the commissioner. Taxpayers who reside in residential communities, group homes, nursing homes, manufactured housing or mobile home parks, or other facilities which are neither conventional homeowner or tenant situations may be allowed to claim a renter's credit pursuant to rules adopted by the commissioner. Persons who have claimed a homestead exemption pursuant to RSA 76-A:4 may claim a renter's credit during the same year only if the exempt homestead is sold during the tax year, in which case the renter's credit may be claimed for the period rent is paid after the date of sale of the exempt homestead. The renter's credit shall not exceed the tax due under this chapter.

IV. In the case of a resident individual, a credit calculated by:

(a) Calculating the wages, self-employment income and unearned income of the individual earned or derived from sources in another state and subject to income tax or a tax measured by income in that state;

(b) Reducing the amount calculated in subparagraph (a) by the portion of the taxpayer's claimed exemptions which bears the same relationship to the taxpayer's total claimed exemptions, as the amount calculated in subparagraph (a) bears to the taxpayer's New Hampshire modified gross income; and

(c) Multiplying the amount calculated in subparagraph (a), as reduced in subparagraph (b), by the rate of tax provided in RSA 76-B:2.

V. In the case of a nonresident individual, a credit calculated by:

(a) Reducing the taxpayer's New Hampshire modified gross income by the amount of wages and self-employment income earned by the taxpayer in New Hampshire and the amount of unearned income from New Hampshire sources;

(b) Reducing the amount calculated in subparagraph (a) by the portion of the taxpayer's claimed exemptions which bears the same relationship to the taxpayer's total claimed exemptions, as the amount calculated in subparagraph (a) bears to the taxpayer's New Hampshire modified gross income; and

(c) Multiplying the amount calculated in subparagraph (a), as reduced in subparagraph (b), by the rate of tax provided in RSA 76-B:2.

#### Returns

##### 76-B:6 Returns.

I. Every resident individual and nonresident individual having New Hampshire modified gross income greater than the exemption amounts provided in RSA 76-B:3, I and every resident fiduciary shall make a return to the department of revenue administration under such rules and in such form or manner as the commissioner may prescribe, on or before the due date of the tax as provided in RSA 76-B:4.

II. A husband and wife who are both residents or who both earn wages or self employment income from sources within New Hampshire shall file a joint return for any taxable year for which such a joint return is filed for United States income tax purposes.

III. Whenever any return shows that overpayment allowable to the taxpayer exceed the amount of tax due, the department shall certify the amount of overpayment to the state treasurer for refund from the education trust fund created by RSA 198:39 or shall allow the taxpayer a credit against taxes due for a subsequent year, to the extent of the overpayment, at the taxpayer's option.

76-B:7 Information Returns. Each individual, partnership, limited liability partnership corporation, limited liability corporation, proprietorship, joint stock company, association, insurance company, business trust, real estate trust, or other form of organization, organized for gain or profit, being a resident or having a place of business in this state or being a nonresident having income derived from sources subject to tax under this chapter, in whatever capacity acting, including lessors or mortgagors of personal property, fiduciaries, employers and all officers and employees of the state or of any political subdivision of the state, having the control, receipt, custody, disposal or payment of salaries, wages, rentals or other compensation or income subject to the provisions of this chapter paid or payable during any year to any taxpayer subject to a tax under this chapter shall on such date or dates as the department shall from time to time designate, make complete return thereof to the department, in such form as the department may prescribe.

#### Withholding of Tax

76-B:8 Who Must Withhold. Every employer as defined by section 3401(d) of the United States Internal Revenue Code of 1986, as amended, employ-

ing any person within this state shall deduct and withhold upon wages paid to said employee, a tax equal to 4 percent of such wages less claimed exemptions, subject, however, to the provisions of RSA 76-B:11.

#### 76-B:9 Time for Payment of Withheld Taxes and Filing Withheld Taxes Returns.

I. Every employer required to deduct and withhold any tax under RSA 76-B:8 shall make a quarterly return thereof to the department on or before the 15<sup>th</sup> of the first calendar month following the calendar quarter for which the return is made. However, a return may be filed on or before the last day of the first calendar month following such quarter if timely deposits have been made in full payment of such taxes due for the quarter.

II. Every employer shall pay over to the department, or to a depository designated by the department, the taxes so required to be deducted and withheld at the same time that such employer is required, under federal income tax law and regulations, to pay over federal taxes that are required to be deducted and withheld from wages to employees.

III. The department may, if such action is necessary in any emergency where collection of the tax may be in jeopardy, require such employer to make such return and pay such tax at any time, or from time to time.

#### 76-B:10 Employer's Liability.

I. Each employer required to deduct and withhold tax under this chapter shall be liable for such tax. In the event an employer fails to withhold and pay over to the department any amount required to be withheld under RSA 76-B:8, the department shall assess such amount against the employer.

II. The amount of tax required to be deducted and withheld and paid over to the department under this chapter, when so deducted and withheld, shall be held to be a special fund in trust for the state. No employee or other person shall have any right of action against the employer in respect to any moneys deducted and withheld from wages and paid over to the department in compliance or in intended compliance with this chapter.

76-B:11 Use of Withholding Tables. At the election of the employer, the employer may deduct and withhold a tax determined on the basis of tables to be prepared and furnished by the department, which tax shall be substantially equivalent to the tax provided in RSA 76-B:8 and which shall be in lieu of the tax required in such section.

#### Estimated Tax Declarations

#### 76-B:12 Filing of Declarations.

I. On the fifteenth day of the fourth month of the current taxable year every resident individual, nonresident individual, and resident fiduciary, except as provided in paragraph II, shall furnish the department with an estimate of such portion of such person's New Hampshire taxable income for the current taxable year as will not be subject to the withholding provisions of this chapter.

II. The provisions of paragraph I are not applicable to resident individuals and nonresident individuals who reasonably anticipate receiving less than \$11,000 of New Hampshire taxable income which will not be subject to withholding during the current taxable year, or to taxpayers receiving their income from farming as defined by the United States Internal Revenue Code of 1986, as amended. The provisions of paragraph I are not applicable to resident fiduciaries who reasonably anticipate having a tax obligation under this chapter of less than \$440.

76-B:13 Payment of Estimated Tax. Each taxpayer required to file an estimated tax declaration shall include with the declaration of estimated



income, payment of not less than 25 percent of the tax due thereon. Thereafter, on the fifteenth day of the sixth and ninth months of the taxable year, the taxpayer shall pay not less than 25 percent of the tax due upon said estimated income or any revised estimate thereof. The fourth installment of estimated tax shall be paid on the fifteenth day of the first month following the close of the taxable year for which the estimate was made.

#### Miscellaneous Provisions

76-B:14 Extension of Time for Returns. For good cause, the department may extend the time within which a taxpayer is required to file a return or declaration and if such return or declaration is filed during the period of extension no penalty or late payment charge may be imposed for failure to file the return at the time required by this chapter, but the taxpayer shall be liable for interest and late payment charges as prescribed in RSA 21-J:28 and RSA 21-J:33. Failure to file the return during the period of the extension shall void the extension.

#### 76-B:15 Administration.

I. This chapter shall be administered and enforced by the commissioner of revenue administration. The commissioner shall adopt rules, under RSA 541-A, necessary to insure the proper administration of this chapter which shall be consistent with the provisions of RSA 21-J:13.

II. The commissioner shall appoint such additional technical, clerical, and other personnel as the commissioner shall deem necessary to carry out the provisions of this chapter.

III. The department of revenue administration shall collect the taxes, interest, and penalties imposed under this chapter and RSA 21-J and shall pay them to the state treasurer less the administrative and enforcement costs of this chapter. The state treasurer shall deposit the remaining amount in the education trust fund established in RSA 198:39.

IV. The commissioner may institute actions in the name of the state to recover any tax, interest on tax, or the penalties imposed by this chapter and RSA 21-J, as part of the commissioner's authority to administer this chapter and to administer and enforce the tax laws of this state generally under RSA 21-J.

V. In the collection of taxes imposed by this chapter, the department may use all of the powers granted to tax collectors under RSA 80 for the collection of taxes, and it has all of the duties imposed upon the tax collectors by RSA 80 including the optional tax sale procedure under RSA 80:58-86. The following shall also apply:

(a) The provisions of RSA 80:26 apply to the sale of land for the payment of taxes due under this chapter, and the state treasurer is authorized to purchase the land for the state.

(b) If the state purchases the land, the state treasurer shall certify the purchase to the governor and the governor shall draw a warrant for the purchase price out of any money in the treasury not otherwise appropriated.

VI. The commissioner shall have the authority to subpoena witnesses, records, and documents, as needed, and to administer oaths to those testifying at hearings. The department and the taxpayer may take the depositions of witnesses residing within and without the state pertaining to a matter under this chapter, in the same way as depositions are taken in civil actions in the superior court.

76-B:16 Fees. Fees of witnesses shall be the same as those allowed to witnesses in the superior court. In the case of witnesses summoned by the commissioner, it shall be considered as an expense of administration of this chapter.

76-B:17 Notice. Any notice required by this chapter to be given by the department to a taxpayer shall be made by mail to the last known address of the taxpayer and in the case of hearings shall be given at least 10 days before the date thereof.

76-B:18 Preference. The taxes and interest imposed by this chapter have preference in any distribution of the assets of the taxpayer, whether in insolvency or otherwise.

76-B:19 Dissolutions, Withdrawals, and Statements of Good Standing.

I.(a) No employer organized under any law of this state may transfer property to its shareholders pursuant to RSA 293-A:14.05(a) or to its members and managers pursuant to RSA 304-C:58 until all taxes required to be withheld by the employer under this chapter, and any interest and penalties that related thereto, have been fully paid and a certificate of dissolution shall have been obtained from the commissioner of revenue administration that no returns, tax required to be withheld, tax interest, or penalties for taxes administered by the department are due and unpaid.

(b) In order to transfer property to its shareholders pursuant to RSA 293-A:14.05(a) or its members or managers pursuant to RSA 304-C:58, an employer shall submit a written request containing the complete corporate or limited liability company name and identification number and accompanied by a non-refundable fee of \$30 to the commissioner of revenue administration. This fee shall be deposited into the general fund. If, after reviewing the employer's records, the commissioner determines that no returns, tax required to be withheld, interest, or penalties for taxes administered by the department are due and unpaid, the commissioner shall prepare a certificate in accordance with subparagraph (a).

II. In order to obtain a statement for withdrawal, in accordance with RSA 293-A:15.20(b)(6) or RSA 304-C:68, an employer shall submit a written request containing the complete employer name and identification number and accompanied by a non-refundable fee of \$30 to the commissioner of revenue administration. This fee shall be deposited into the general fund. If, after reviewing the employer's records, the commissioner determines that no returns, tax required to be withheld, interest, or penalties for taxes administered by the department are due and unpaid, the commissioner shall prepare a statement for withdrawal for the purposes required under RSA 293-A:15.20(b)(6) or RSA 304-C:68.

III. In order to obtain a statement that it is in good standing with the department of revenue administration, an employer shall submit a written request containing the complete employer name and identification number and accompanied by a non-refundable fee of \$30 to the commissioner of revenue administration. This fee shall be deposited into the general fund. If, after reviewing the employer's records, the commissioner determines that no returns, tax required to be withheld, interest, or penalties for taxes administered by the department are due and unpaid, the commissioner shall prepare a statement of good standing.

76-B:20 Liens for Tax.

I. If any employer required to deduct and withhold a tax under this chapter neglects or refuses to pay the same after demand, the unpaid amount, including any late payment charge and interest together with any costs that may accrue in addition thereto, shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to such employer. Such liens shall arise at the time assessment and demand is made by the department and shall continue until the liability for the full amount of the lien is satisfied or becomes unenforceable. Such lien against personal property shall be valid as

against any subsequent mortgagee, pledgee, purchaser or judgment creditor when notice of such lien and the sum due has been placed on record by the department with the secretary of state and in the office of the town clerk where the taxpayer resides. Such lien against real property shall be valid as against any subsequent mortgagee, pledgee, purchaser or judgement creditor when notice of such lien and the sum due has been placed on record by the department with the register of deeds for the county in which the property subject to the lien is situated. In the case of any prior mortgage on real or personal property so written as to secure a present debt plus future advances by the mortgagee to the mortgagor, the lien herein provided, when notice thereof has been properly recorded, shall be subject to such prior mortgage unless the department also notifies the mortgagee in writing of the recording of such lien, in which case any indebtedness thereafter created from mortgagor to mortgagee shall be junior to the lien herein provided for.

II. The lien created by paragraph I shall be released upon satisfaction of the amount of the lien or upon a finding by the commissioner that the lien has become unenforceable, or if there is furnished to the department a bond with surety approved by the department in a penal sum sufficient to equal the amount of the lien, said bond to be conditioned upon the payment of the amount of the lien upon a final determination or adjudication of the employer's liability therefor.

III. The lien created by paragraph I may be foreclosed in the case of real estate agreeably with the provisions of law relating to foreclosure of mortgages on real estate, and in the case of personal property agreeably with the provisions of law relating to the foreclosure of security interests in personal property.

IV. To secure payment of the taxes, fees, charges and interest imposed by this chapter and RSA 21-J, the department may avail itself of any other provision of law relating to liens for taxes.

76-B:21 Additional Returns. When the commissioner has reason to believe that a taxpayer has failed to file a return or to include any part of New Hampshire modified gross income in a filed return, the commissioner may require the taxpayer to file a return or a supplementary return showing such additional information as the commissioner prescribes. Upon the receipt of the supplementary return, or if none is received, within the time set by the commissioner, the commissioner may find and assess the amount due upon the information that is available. The making of such additional return does not relieve the taxpayer of any penalty for failure to make a correct original return or relieve the taxpayer from liability for interest imposed under RSA 21-J:28 or any other additional charges imposed by the commissioner. This section shall not be construed to modify or extend the statute of limitations provided in RSA 21-J:29.

76-B:22 Corrections. Each taxpayer shall report to the commissioner of any change in the amount of the taxpayer's New Hampshire modified gross income as finally determined by the United States Internal Revenue Service with respect to any previous year for which the taxpayer has made a return under this chapter. Such a report shall be made not later than 6 months after the taxpayer has received notice that such change has finally been determined. Notwithstanding any other provision of law, a taxpayer reporting a correction pursuant to this section shall be given notice by the department of any adjustment to the tax due with respect to such correction within 6 months of the filing of the report.

76-B:23 Taxpayer Records. Every taxpayer shall:



I. Keep such records as may be necessary to determine the amount of the taxpayer's liability under this chapter;

II. Preserve such records for the period of 3 years or until any litigation or prosecution hereunder is finally determined;

III. Make such records available for inspection by the commissioner or authorized agents, upon demand, at reasonable times. Whoever violates the provisions of this section shall be subject to the penalties imposed under RSA 21-J:39.

76-B:24 Severability. If any provision or provisions of this chapter, is or are declared unconstitutional or inoperative by a final judgment, order or decree of the supreme court of the United States or of the supreme court of New Hampshire, the remaining provisions of said chapter shall not be affected thereby.

3 New Subdivisions; State Aid for Educational Adequacy; Education Trust Fund; Commission. Amend RSA 198 by inserting after section 37 the following new subdivisions:

State Aid for Educational Adequacy; Education Trust Fund  
198:38 Definitions. In this subdivision:

I. "Municipality" means a city, town, or unincorporated place.

II. "School district" means school district as defined in RSA 194:1 or RSA 195:1.

III. "Elementary school" means a school with any of the grades kindergarten through 8.

IV. "High school" means a school with any of the grades 9 through 12.

V. "Base expenditure per pupil" means the amounts calculated in accordance with RSA 198:39, II.

VI. "Average base cost per pupil of an adequate education" means the amount as calculated in accordance with RSA 198:40.

VII. "Weighted pupils" means resident pupils who have been assigned to one or more of the following classifications:

(a) An elementary pupil, which shall include kindergarten pupils, 1.0.

(b) A high school pupil, 1.2.

(c) An elementary pupil who is eligible to receive a free or reduced-priced meal shall receive an additional weight of .14.

VIII. "Educationally disabled child" means an educationally disabled child as defined in RSA 186-C:2, I.

IX. "Consumer price index" means the consumer price index for all items for urban consumers for the United States published by the United States Department of Labor.

X. "Special education costs" means the cost of special education and educationally related services provided to educationally disabled children reported by school districts on the MS-25 form less any federal IDEA funds, state special education catastrophic aid, and special education medicaid reimbursement received by the districts.

XI. "Average daily membership in attendance" means average daily membership in attendance as defined in RSA 189:1-d, III.

XII. "Average daily membership in residence" and "resident pupils" mean the average daily membership in residence as defined in RSA 189:1-d, IV.

XIII. "Transportation costs" means the costs of transporting pupils to and from school and other school activities reported by school districts on the MS-25 form.

198:39 Education Trust Fund Created.

I. The treasurer shall establish an education trust fund in the treasury. Moneys in such fund shall not be used for any purpose other than to distribute adequate education grants to municipalities' school districts pursu-

ant to RSA 198:42, make catastrophic aid payments under RSA 186-C:18, III, make school building aid payments pursuant to RSA 198:15-b, fund skill center tuition and transportation costs, reimburse municipalities for costs of collection and administration under RSA 76-A, and make taxpayer refunds under RSA 76-A:4 and RSA 76-B:6, III, and for such other educational appropriations, as the legislature may from time to time designate. The state treasurer shall deposit into this fund immediately upon receipt:

(a) The full amount of the statewide education property tax payments from municipalities pursuant to RSA 76-A:11.

(b) The full amount of the education income tax payments from the department of revenue administration pursuant to RSA 76-B:15.

(c) All moneys due the fund in accordance with RSA 284:21-j.

(d) All moneys in the local education betterment fund established in 1998, 389:16.

(e) Any other moneys appropriated from the general fund.

II. The education trust fund shall be nonlapsing. The state treasurer shall invest that part of the fund which is not needed for immediate distribution in short-term interest-bearing investments. The income from these investments shall be returned to the fund.

198:40 Methodology for Calculating the Cost of an Adequate Education.

I. For the fiscal year beginning July 1, 2000, the average base per pupil cost of an elementary school pupil shall be \$2,700.

II. For the biennium beginning July 1, 2001, and every biennium thereafter, the average base per pupil cost of an elementary school pupil shall be established by the general court.

III. The weighted average daily membership in residence for each district shall be calculated by combining the district's elementary average daily membership in residence with its weighted high school average daily membership in residence and the district's additional average daily membership in residence resulting from elementary pupils eligible to receive a free or reduced-priced meal. The statewide weighted average daily membership in residence of pupils shall be calculated by combining the weighted average daily membership in residence of each school district in the state.

IV. For each fiscal year, the statewide cost of an adequate education for all pupils shall be calculated by multiplying the average base per pupil cost of an adequate education by the statewide weighted average daily membership in residence of pupils and then adding 99.5 percent of total statewide special education costs plus 50 percent of total statewide district transportation costs.

198:41 Determination of Adequate Education Grants.

I. Except for municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of revenue administration shall determine the amount of the adequate education grant for the municipality as follows:

(a) Multiply the average base per pupil cost of an adequate education by the weighted average daily membership in residence for the municipality;

(b) Add to the product of subparagraph (a), 50 percent of the municipality's apportioned transportation cost;

(c) Add to the sum of subparagraph (b), 99.5 percent of the municipality's apportioned special education cost;

(d) Subtract from the sum of subparagraph (c) the amount of the education property tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76-A:3, II for the next tax year.

II. For municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of revenue administration shall determine the amount of the adequate education grant for each municipality as the lesser of the following 2 calculations:

(a) The amount calculated in accordance with paragraph I of this section; or

(b) The total amount paid for items of current education expense as determined by the department of education minus the amount of the education property tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76-A:3, IV for the next tax year.

198:42 Distribution Schedule of Adequate Education Grant.

I. Beginning with the fiscal year ending June 30, 2001 and for each fiscal year thereafter, the adequate education grant determined in RSA 198:41 shall be distributed to each municipality's school district or school districts from the education trust fund as follows:

(a) Payment of 1/6 of the grant on or before August 1; and

(b) Payment of 1/12 of the grant on or before the first of each other month except June.

II. The general court is constitutionally obligated to fund the cost of an adequate education, and there are hereby appropriated the funds necessary to make the payments required under RSA 198:41. The governor is authorized to draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

III. The department of revenue administration shall certify the amount of each grant to the state treasurer and direct the payment thereof to the school district or districts. When a payment of a grant is made to a school district, the municipality on whose behalf the payment is made, shall receive notification from the state treasurer of the amount of the payment made to its school district or districts.

198:43 Additional Education Expenditures. Nothing in this subdivision shall prevent the assessment and collection of property taxes locally, under general provisions of law, to meet budgeted expenses of education not funded through distributions from the education trust fund under RSA 198:42.

198:44 Use of Funds for Education Purposes.

I. Annually, each school district shall appropriate an amount that equals or exceeds the amount necessary to fund an adequate education for the pupils in that district. Notwithstanding any other provision of law, in the event a school district fails to appropriate at least the required amount, that amount shall be assessed and collected by the municipality, appropriated to the school district, and expended for educational purposes in accordance with paragraph IV without a vote of the school district.

II. On or before June 30 of each year, the individual with fiscal responsibility in each municipality shall submit a statement to the commissioner of revenue administration that the funds collected by the municipality pursuant to RSA 76:8 have been paid over to the school district or districts to be expended for educational purposes in accordance with paragraph IV. The statement shall include the following: *"I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete."*

III. If a municipality uses any part of the funds collected pursuant to RSA 76:8 for non-educational purposes, the municipality shall pay to the school district an amount equal to the portion of funds used for such non-educational purposes.



IV. The funds collected by municipalities pursuant to RSA 76:8 and the funds received from the state pursuant to RSA 198:42 shall be appropriated by a school district only for current education expenses or transfers to reserves or trusts funds and shall not be used for any other purpose. When setting any local property tax rates pursuant to RSA 21-J:35, the commissioner shall treat any adequate education funding received or to be received by a school district during each fiscal year, whether pursuant to RSA 76-A:3 or RSA 198:42, as revenue to the district to fund officially approved appropriations certified under RSA 21-J:34, II and RSA 198:4-a.

V. On or before June 30 of each year, the individual with fiscal responsibility in each school district shall submit a statement to the commissioner of revenue administration that an amount of money that equals the amount necessary to fund an adequate education for the pupils in that district was used in accordance with paragraph IV. The statement shall include the following: *"I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete."*

198:45 Duties of the Department of Education and the Board of Education.

I. The department of education shall, on or before September 30 of each year, collect from the school districts final data concerning all aspects of student attendance for the school year ending June 30 of that year necessary to establish the average daily membership, average daily membership in residence, and weighted average daily membership in residence, including the municipality of residence for each pupil for that year. The department of education shall submit a report by December 31 to the speaker of the house of representatives and the senate president to be used for purposes of determination by the legislature of the appropriation to the education trust fund. A copy of such report shall, at the same time, be given to the department of revenue administration.

II. The board of education shall adopt rules pursuant to RSA 541-A necessary to the proper administration of this subdivision.

#### Adequate Education and Education

##### Financing Reform Commission

198:46 Adequate Education and Education Financing Reform Commission Established; Membership.

I. There is hereby established an adequate education and education financing reform commission which shall be composed of 22 members as follows:

(a) Three house members, including one member of the education committee, one member of the finance committee, and one member of the minority party, appointed by the speaker of the house.

(b) Three senators, including one member of the education committee, one member of the finance committee, and one member of the minority party, appointed by the senate president.

(c) Four members appointed by the governor, one of whom shall be an elementary or secondary special education teacher, one of whom shall be a primary teacher who does not teach special education, and one of whom shall be a member of the business community.

(d) The commissioner of the department of education, or designee.

(e) The chancellor of the university system of New Hampshire or designee.

(f) The commissioner of the regional community-technical college system.

(g) One member from the state board of education, appointed by the chairperson of the state board of education.

(h) One member from a special education advocacy organization, appointed by such organization; and

(i) Seven members who shall be agreed to and jointly appointed by the governor, the president of the senate, and the speaker of the house consisting of the following:

(1) One local school board member, recommended by the New Hampshire School Boards Association.

(2) One school administrator, recommended by the New Hampshire School Administrators Association.

(3) One special education administrator at the elementary or secondary school level, recommended by the New Hampshire Association of Special Education Administrators.

(4) Two parents of school-age children, one of whom shall be the parent of a child with an educational disability.

(5) One member from the business community, who shall be associated with the School to Work Initiative.

(6) One school business official, recommended by the New Hampshire Association of School Business Officials.

II. The commission shall elect a chairperson from among its membership and shall form subcommittees necessary to perform its duties. The chairperson shall determine the frequency of meetings at its first meeting.

III. The members of the commission shall serve without compensation, provided that legislative members of the commission shall receive mileage at the legislative rate while attending to the duties of the commission, and provided that the parent members of the commission shall be reimbursed for travel expenses associated with their duties on the commission.

IV. In order to ensure that all students are provided an adequate education, the duties of the commission shall be as follows:

(a) Determine and recommend the costs of an adequate education for all students in New Hampshire by determining and calculating adjustments for individual school districts based on yearly inflation, cost of living variances, diseconomies of scale, transportation variability, demographics, including for school districts with a disproportionate number of students who are economically disadvantaged or have educational disabilities, and such other factors as deemed relevant.

(b) Determine and recommend the amount of state aid, including building aid, to be distributed to cities and towns based upon the cost of an adequate education as set forth in subparagraph (a) and the method for distributing the state aid.

(c) Recommend changes in policy and procedure in the areas of educational improvement and accountability.

(d) Recommend interim and permanent processes to ensure adequate planning and implementation at the local and state level of special education and educationally related services, including planning for and development, on an interagency basis, of local school based options for pupils who have been placed in alternative or separate schools who could be placed in appropriate less restrictive options if available.

V. The commission shall be divided into the following policy subcommittees: adequacy and cost, educational improvement and accountability, and special education funding.

VI. The commission shall report its findings and recommendations no later than December 1, 2000. The report shall include, for each recommendation, proposed implementation schedules with timelines, specific steps, agencies and persons responsible, and resources needed.

Where feasible, all plans, measures and initiatives shall be proposed as legislation or regulation so that they will have the force of law. All recommendations and plans shall be designed to be fully implemented no later than September 1, 2004.

VII. The department of justice, department of revenue administration, department of education, and department of health and human services shall provide the commission with assistance.

4 New Subparagraphs; Special Education; Catastrophic Aid Payments Constitutionally Obligated. Amend RSA 186-C:18, III by inserting after subparagraph (c) the following new subparagraphs:

(d) For each fiscal year beginning with the fiscal year ending June 30, 2000, 0.5 percent of the total statewide special education costs as defined in RSA 198:38, IX shall be appropriated from the education trust fund established in RSA 198:39 to the department of education to assist those school districts which, under rules adopted by the state board of education, qualify for emergency assistance in meeting special education catastrophic costs pursuant to this section.

(e) The general court is constitutionally obligated to fund the cost of an adequate education, and there are hereby appropriated for the biennium ending June 30, 2001, the funds necessary to make the payments required in this section. The governor is authorized to draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

5 Appropriation. The sum of \$150,000 for the fiscal year ending June 30, 2000, is hereby appropriated for the purposes of the commission established in RSA 198:46 as inserted by section 3 of this act. This sum shall be nonlapsing until June 30, 2001. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

6 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:7, I to read as follows:

I. If a cooperative school district was organized prior to July 1, 1963, during the first 5 years after the formation of a cooperative school district each preexisting district shall pay its share of all capital outlay costs and ***all*** operational costs ***in excess of the amount determined necessary to provide an adequate education under RSA 198:40*** in accordance with either one of the following formulas as determined by a majority vote of the cooperative district meeting:

7 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:14, I(b) to read as follow:

(b) The commissioner of revenue administration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum, in accordance with RSA 21-J:35, which may be used as a setoff against the amount appropriated when it appears to the commissioner of revenue administration such adjustment is in the best public interest. ***The commissioner of revenue administration shall apply the total amount of all adequate education grants received pursuant to RSA 198:42.***

8 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:18, III(e) to read as follows:

(e) The method of apportioning ~~the~~ ***all*** operating expenses ***in excess of the amount determined necessary to provide an adequate education under RSA 198:40***, of the cooperative school district among the several preexisting districts and the time and manner of payment of such shares. Home education pupils who do not receive services from the coop-



erative school district, except an evaluation pursuant to RSA 193-A:6, II, shall not be included in the average daily membership relative to apportionment formulas.

9 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:18, IX to read as follows:

IX. The organization meeting of a cooperative school district shall be called to order by the chairperson of the cooperative school district planning board, or by the clerk-treasurer thereof, who shall serve as temporary chairperson for the first order of business which shall be the election of a moderator and of a temporary clerk, by ballot, who shall be qualified voters of the district. From and after the issuance of the certificate of formation by the board to the date of operating responsibility of the cooperative school district, such district shall have all the authority and powers of a regular school district for the purposes of incurring indebtedness, for the construction of school facilities and for such other functions as are necessary to obtain proper facilities for a complete program of education. When necessary in such interim, the school board of the cooperative school district is authorized to prepare a budget and call a special meeting of the voters of the district, which meeting shall have the same authority as an annual meeting, for the purpose of adopting the budget, making necessary appropriations, and borrowing money. Whenever the organization meeting is held on or before April 20 in any calendar year, no annual meeting need be held in such calendar year. Sums of money raised and appropriated at the organization meeting or any interim meeting prior to the first annual meeting shall be forthwith certified to the commissioner of revenue administration and the state department of education upon blanks prescribed and provided by the commissioner of revenue administration for the purpose, together with a certificate of estimated revenues, so far as known, and such other information as the commissioner of revenue administration may require. The commissioner of revenue administration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum which may be used as a setoff against the amount appropriated when it appears to the commissioner such adjustment is in the best public interest. ***The commissioner of revenue administration shall apply the total amount of all adequate education grants received pursuant to RSA 198:40 as a setoff against the amount appropriated.*** The commissioner of revenue administration shall certify to the state department of education the total amount of taxes to be raised for said cooperative school district and the state department of education shall determine the proportional share of said taxes to be borne by each preexisting school district and notify the commissioner of revenue administration of its determination. Upon certification by the commissioner of revenue administration the selectmen of each town shall seasonably assess the taxes as provided by law. The selectmen shall pay over to the treasurer of the cooperative district such portion of the sums so raised as may reasonably be required according to a schedule of payments needed for the year as prepared by the treasurer and approved by the cooperative school board, but no such payment shall be greater in percentage to the total sum to be raised by one local district than that of any other local district comprising such cooperative school district.

10 New Paragraph; Rulemaking; State Treasurer. Amend RSA 6:3-a by inserting after paragraph VII the following new paragraph:

VIII. Administrative functions under RSA 198:39 and RSA 76-B.

11 New Subparagraph; Education Trust Fund. Amend RSA 6:12, I by inserting after subparagraph (www) the following new subparagraph:

(xxx) Money received under RSA 76-A, RSA 76-B, and from the sweepstakes fund, which shall be credited to the education trust fund under RSA 198:39.

12 Gender Reference Change. Amend the introductory paragraph of RSA 21-J:3 to read as follows:

In addition to the powers, duties, and functions otherwise vested by law, including RSA 21-G, in the commissioner of the department of revenue administration, ~~he~~ **the commissioner** shall:

13 Duties of Commissioner. Amend RSA 21-J:3, XIII to read as follows:

XIII. Equalize annually the valuation of the property in the several towns, cities, and unincorporated places in the state by adding to or deducting from the aggregate valuation of the property ~~as assessed~~ in towns, cities, and unincorporated places such sums as will bring such valuations to the true and market value of the property, including the equalized value of property formerly taxed pursuant to the provisions of RSA 72:7; 72:15, I, V, VII, VIII, IX, X, and XI; 72:16; 72:17; 73:26; 73:27; and 73:11 through 16 inclusive, which were relieved from taxation by the laws of 1970, 5:3; 5:8; 57:12; and 57:15, the equalized valuation of which is to be determined by the amount of revenue returned in such year in accordance with RSA 31-A, and by making such adjustments in the value of other property from which the towns, cities, and unincorporated places receive taxes **or payments in lieu of taxes** as may be equitable and just, so that any public taxes that may be apportioned among them shall be equal and just. ***In carrying out the duty to equalize the valuation of property, the commissioner shall follow the procedures set forth in RSA 21-J:9-a.***

14 Duties of Commissioner; Electronic Funds Transfer. RSA 21-J:3, XXI is repealed and reenacted to read as follows:

XXI. Except as provided in RSA 78-A:8, have authority to require the payment of any tax, interest, or penalty, or the refund or abatement thereof by electronic funds transfer.

15 New Paragraphs; Duties of Commissioner. Amend RSA 21-J:3 by inserting after paragraph XXIV the following new paragraphs:

XXV. Petition the board of tax and land appeals to issue an order for reassessment of property pursuant to the board's powers under RSA 71-B:16 - 19 whenever, the valuation of property for equalization purposes in a particular city, town, or unincorporated place is disproportional to the valuation for equalization purposes in other cities, towns, or unincorporated places in the state.

XXVI. Have authority subject to appropriation to establish the filing of any return or document by electronic data submission and to enter into contractual agreements with vendors to provide the means by which such electronic data is submitted to the department. The commissioner may by rule or otherwise establish procedures necessary to implement this section.

16 Division of Property Appraisal; Department of Revenue Administration. RSA 21-J:9 is repealed and reenacted to read as follows:

21-J:9 Division of Property Appraisal. There is established within the department the division of property appraisal, under the supervision of a classified director of property appraisal who shall be responsible for the following functions, in accordance with applicable laws:

I. Assisting and supervising municipalities and appraisers in appraisals and valuations as provided in RSA 21-J:10 and RSA 21-J:11.

II. Appraising state-owned forest and recreation land under RSA 227-H and RSA 216-A.

III. Annually determining the total equalized valuation of properties in the cities and towns and unincorporated places according to the requirements of RSA 21-J:9-a.

IV. Preparing a standard appraisal manual which may be used by assessing officials, and holding meetings throughout the state with such officials to instruct them in appraising property.

17 New Section; Equalization Procedure. Amend RSA 21-J by inserting after section 9 the following new section:

21-J:9-a Equalization Procedure. The following procedures shall apply in determining the equalization of property within the cities, towns, and unincorporated places as required by RSA 21-J:3, XIII:

I. The commissioner shall annually conduct a sales-assessment ratio study which shall include arm's length sales or transfers of property that occurred 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made.

II. In determining the arm's length sales or transfers that are included in the sales-assessment ratio study, the commissioner may use a randomly selected sample of such sales and transfers the size of which shall be determined by the total taxable parcels in the city, town, or unincorporated place.

III. If less than 2 percent of the total taxable parcels in a city, town, or unincorporated place has been transferred by an arm's length sale or transfer during the 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made or the commissioner determines the sales are unrepresentative of the property within the municipality, the commissioner may choose one or more of the following options:

(a) Include appraisals of any of the taxable property of such city, town, or unincorporated place in the sales-assessment ratio study. Such appraisals shall be based on full and true market value pursuant to RSA 75:1 and shall be performed by department appraisers. The property to be appraised shall be selected by the commissioner.

(b) Consider recent equalization ratio activity in adjoining cities, towns, or unincorporated places.

(c) Include arm's length sales or transfers in the city, town, or unincorporated place, within 2-1/2 years preceding April 1 of the year preceding the tax year for which such equalization is made.

IV. The commissioner shall use the inventory of property transfers authorized by RSA 74:18 in determining the equalized value of property and may consider such other evidence as may be available to the commissioner on or before the time the final equalized value is determined.

18 Appraisals of Property for Ad Valorem Tax Purposes. RSA 21-J:11 is repealed and reenacted to read as follows:

21-J:11 Appraisals of Property For Ad Valorem Tax Purposes.

I. Every person, firm, or corporation intending to engage in the business of making appraisals on behalf of a municipality for tax assessment purposes in this state shall notify the commissioner of that intent in writing. No person, firm, or corporation engaged in the business of making appraisals of taxable property for municipalities and taxing districts shall enter into any contract or agreement with any town, city, or other governmental division without first submitting the proposed contract or agreement to the commissioner for examination and approval and submitting to the commissioner evidence of financial responsibility and professional capability of personnel to be employed under the contract.



II. The commissioner, at no expense to the municipality, shall monitor appraisals of property and supervise appraisers as follows:

(a) Assure that appraisals comply with all applicable statutes and rules;

(b) Assure that appraisers are complying with the terms of any appraisal contract;

(c) Review the accuracy of appraisals by inspection, evaluation, and testing, in whole or in part, of data collected by the appraisers; and

(d) Report to the governing body on the progress and quality of the municipality's appraisal process.

III. The commissioner shall adopt rules under RSA 541-A relative to the provisions required of all contracts for appraisal services and the methodology for inspection, evaluation, and testing of data for the purposes of appraisal monitoring.

19 Exemption from Rulemaking; Interest and Dividends Tax Deleted; Education Income Tax Added. Amend RSA 21-J:13-a to read as follows:

21-J:13-a Exemption From Rulemaking Requirement. The commissioner shall be exempt from adopting, as rules pursuant to RSA 541-A, the requirements on the department's tax filing forms for the business profits tax, business enterprise tax, and ~~[interest and dividends]~~ **education income** tax.

20 Distraint; Taxes Collected or Withheld. Amend RSA 21-J:28-d to read as follows:

21-J:28-d Distraint. Upon neglect or refusal of any person or corporation to pay the taxes assessed upon them *or taxes collected or withheld by them*, the department may distraint the *goods, chattels*, personal estate, property interest, right or credit of such person or corporation.

21 Income Tax; Penalty for Failure to File. Amend RSA 21-J:31 to read as follows:

21-J:31 Penalty for Failure to File. Any taxpayer who fails to file a return when due, unless an extension has been granted by the department, shall pay a penalty equal to 5 percent of the amount of the tax due or \$10, whichever is greater, for each month or part of a month during which the return remains unfilled. The total amount of any penalty shall not, however, exceed 25 percent of the amount of the tax due or \$50, whichever is greater. This penalty shall not be applied in any case in which a return is filed within the extended filing period as provided in RSA 76-B:12, [RSA 77:18-b,] RSA 77-A:9, RSA 77-E:8, RSA 83-C:6, RSA 83-E:5 or RSA 84-A:7, or the failure to file was due to reasonable cause and not willful neglect of the taxpayer. The amount of the penalty is determined by applying the percentages specified to the net amount of any tax due after crediting any timely payments made through estimating or other means.

22 Income Tax; Substantial Understatement Penalty. Amend RSA 21-J:33-a, I to read as follows:

I. If there is a substantial understatement of tax imposed under RSA 76-B, [RSA 77,] RSA 77-A, RSA 77-E, RSA 78-A, RSA 78-C, RSA 82-A, RSA 83-C, or RSA 83-E, for any taxable period, there shall be added to the tax an amount equal to 25 percent of the amount of any underpayment attributable to such understatement.

23 Reports Required. Amend the introductory paragraph of RSA 21-J:34 to read as follows:

The governing body of each city, town, unincorporated town, unorganized place, school district, and village district, and the clerk of each county convention shall submit to the commissioner of revenue admin-

istration the following reports necessary to compute and establish *the statewide education tax rate and* the tax rate for each city, town, unincorporated town, unorganized place, school district, village district, and county. The commissioner shall adopt rules under RSA 541-A establishing the form and content of these reports:

24 New Paragraph; Reports Required. Amend RSA 21-J:34 by inserting after paragraph XIV the following new paragraph:

XV. A report filed by the assessing officials of each city, town, and unincorporated place shall certify sales-assessment information necessary for the department to conduct the annual sales-assessment ratio study required by RSA 21-J:9-a. This report shall be filed within 45 days after receipt from the department.

25 Board of Tax and Land Appeals; Authority. Amend RSA 71-B:5, II to read as follows:

II. To hear and determine [any] appeals by towns relating to the [equalization of valuation performed] equalized valuation of property determined by the commissioner of revenue administration pursuant to RSA 21-J:3, XIII. Any town aggrieved by [an] its equalized valuation as determined by the commissioner of revenue administration must appeal to the board in writing within 30 days of [the town's notification] notice of [the] its final equalized valuation by the commissioner. The board shall hear and make a final ruling on such appeal within 45 days of its receipt by the board. The board's decision on such appeal shall be final and not appealable. For the purposes of the statewide education property tax only, the board's decision on equalized valuation may be appealed to the supreme court. Such appeal shall be filed with the clerk of the supreme court within 10 days after the date the decision is mailed by the board to the town. The supreme court shall give the appeal priority on the court calendar and may hold a special session to consider such appeal if it considers such action necessary. Decisions issued by the supreme court prior to September 30 shall be effective immediately and shall be used by the commissioner in determining the tax to be raised by each municipality under RSA 76-A:3. The supreme court may adopt rules relative to this appeal process.

26 New Paragraph; Order for Reassessment. Amend RSA 71-B:16, IV to read as follows:

IV. When a complaint is filed with the board alleging that all of the taxable real estate or taxable property in a taxing district should be reassessed or newly assessed for any reason, provided that such complaint must be signed by at least 50 property taxpayers or 1/3 of the property taxpayers in the taxing district, whichever is less[.]; or

V. When the commissioner of revenue administration files a petition with it pursuant to RSA 21-J:3, XXV.

27 Reference to Interest and Dividend Tax Deleted; Education Income Tax Added. Amend RSA 72:34, II to read as follows:

II. For those exemptions having income or asset limitations, the assessing officials may request true copies of any of the following, as needed to verify eligibility. Any documents submitted shall be considered confidential, handled so as to protect the privacy of the applicant, and returned to the applicant at the time a decision is made on the application. The documents are:

- (a) Federal income tax form; and
- (b) [State interest and dividends tax form; and
- (c)] Property tax inventory form filed in any other town; and
- (c) Education income tax form.

RSA 359-C shall not apply to the documents requested for verification under this section.

28 New Section; Inventory of Property Transfers. Amend RSA 74 by inserting after section 17 to following new section:

74:18 Inventory of Property Transfers.

I. In order to properly equalize the value of property under RSA 21-J:3, XIII, an inventory of property transfers shall be filed with the department of revenue administration and with the municipality where the property is located for each transfer of real estate or interest in real estate. Each form may include the following information:

(a) The buyer and seller's names and post transaction addresses and the name and address of a contact person if the buyer or seller is a trust or corporation.

(b) A description of the exact location of the property by town, street, and the assessor's map, lot, and block number.

(c) The acreage included in the sale.

(d) An accurate description of the property included in the sale, the neighborhood where the property is located, and the type and style of the property sold.

(e) The buyer's ownership interest in the property.

(f) The sale price, date of transfer, and the amount mortgaged.

(g) The description of the type of transfer that has taken place.

(h) The amount of personal property included in the sale price.

(i) Whether the property was previously occupied and by whom, whether the property will serve as the buyer's primary residence, and whether the buyer claims a homestead exemption pursuant to RSA 76-A:4.

(j) The financing arrangements made to purchase the property to be answered at the option of the buyer.

(k) Whether any concessions were made in the sale.

(l) Whether the property was in current use.

(m) Whether land use taxes were considered in the sale.

(n) The buyer's dated signature certifying that the information indicated on the form is true.

II. The inventory of property transfers required by this section shall be filed with the department of revenue administration and with the municipality where the property is located by the purchaser, grantee, assignee, or transferee, no later than 30 days from the recording of the deed at the register of deeds or transfer of real estate, whichever is later. Persons required to file the inventory of property transfers who willfully fail to file or willfully make false statements on the forms shall be guilty of a violation.

III. No deed, recording a transfer of real estate or any interest in real estate, executed before October 1, 1995, shall be required to comply with this section.

IV. Failure to comply with this section shall not be construed to cloud title.

V. Any information provided to the department pursuant to this section shall be exempt from the right-to-know law, RSA 91-A.

29 Distraint; Taxes Collected or Withheld. Amend RSA 80:8 to read as follows:

80:8 Distraint. Upon neglect or refusal of any person or corporation to pay the taxes assessed upon them *or taxes collected or withheld by them*, the collector may distraint the goods, chattels, personal estate, property interest, right, or credit of such person or corporation.

30 Reference Change. Amend RSA 193:1, I(c) to read as follows:



(c) The relevant school district superintendent has excused a child from attendance because the child is physically or mentally unable to attend school, or has been temporarily excused upon the request of the parent for purposes agreed upon by the school authorities and the parent. Such excused absences shall not be permitted if they cause a serious adverse effect upon the student's educational progress. Students excused for such temporary absences may be claimed as full-time pupils for purposes of calculating state aid under RSA 186-C:18 and [RSA 198:27-37] adequate education grants under RSA 198:41.

31 Reimbursement Anticipation Notes; Version Effective Until July 1, 1999. Amend RSA 198:20-d to read as follows:

198:20-d Reimbursement Anticipation Notes. Notwithstanding any other provision of law to the contrary, a school district may incur debt in anticipation of reimbursement under RSA 186-C:18 and under RSA 198:42. The governing body, after receiving authorization for borrowing from the legislative body, may elect to recognize the proceeds of the borrowing as revenue for property tax rate setting purposes by providing written notification, prior to September 1, to the commissioner of the department of revenue administration stating the specific amount of borrowing to be recognized as revenue.

32 Reimbursement Anticipation Notes; July 1, 1999 Version. Amend RSA 198:20-d to read as follows:

198:20-d Reimbursement Anticipation Notes. Notwithstanding any other provision of law to the contrary, a school district may incur debt in anticipation of reimbursement under RSA 186-C:18 *and under RSA 198:42*. The governing body, after notice and public hearing, may elect to borrow such funds and to recognize the proceeds of the borrowing as revenue for property tax rate setting purposes by providing written notification to the commissioner of the department of revenue administration stating the specific amount of borrowing to be recognized as revenue. Any borrowing under this section shall be exempt from the provisions of RSA 33, relative to debt limits.

33 Sweepstakes. RSA 284:21-j is repealed and reenacted to read as follows:

284:21-j Establishment. The state treasurer shall credit all moneys received from the sweepstakes commission, and interest received on such moneys, to a special fund from which the treasurer shall pay all expenses of the commission incident to the administration of this subdivision and RSA 287-E. Any balance left in such fund after such expenses are paid shall be deposited in the education trust fund established under RSA 198:39.

34 Transition. As of July 1, 1999, all funds, from any source derived, which would be distributed as foundation aid shall be deposited in the education trust fund under RSA 198:39, including the \$62,000,000 appropriated under 1998, 389:16, II.

35 Removing Reference to Foundation Aid. Amend RSA 198:21, V to read as follows:

V. No pupil counted by any school district for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be ~~[included in average daily membership for the purposes of foundation aid or]~~ counted for the purposes of grants pursuant to RSA 198:22.

36 Removing Reference to Foundation Aid. Amend RSA 198:22, V to read as follows:

V. No pupil counted by any school for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be ~~included in average daily membership for the purposes of foundation aid or~~ counted for the purpose of grants pursuant to RSA 198:21.

37 Bond. To provide initial funding for start-up costs including equipment and computer purchases and other administrative and enforcement costs under RSA 76-B:15, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding an amount certified by the commissioner of revenue administration and for said purposes may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6-A. Payments of principal and interest of the bonds and notes shall be made from the education trust fund established in RSA 198:39. The bonds shall be 5-year bonds.

38 First Taxable Year of Income Tax. The first taxable period under RSA 76-B, as inserted by section 2 of this act, begins January 1, 2000, and ends December 31, 2000. Persons liable for a tax during the first taxable period and who do not report the payment of federal income taxes on a calendar year basis are entitled to such proportion of the exemptions allowed in RSA 76-B as the period bears to their taxable year. The determination of the tax shall be made under rules adopted by the commissioner of revenue administration under RSA 541-A, consistent with the general purposes and provisions of RSA 76-B. Persons required to make information returns for the first taxable period shall make them on a proportional basis in such form as the commissioner requires. For such first taxable period under RSA 76-B, all penalties, but not interest, shall be waived for underpayment of estimated taxes and insufficient withholding for calendar year 2000.

39 Returns for Certain Taxes.

I. All persons who are liable for a tax under RSA 77 as of December 31, 1999, who thereafter are no longer liable for a tax under RSA 77 because of the passage of this act shall make a return of such taxes due the commissioner of revenue administration in such manner and on such forms as the commissioner shall prescribe in rules adopted under RSA 541-A. The administrative provisions of RSA 77 shall remain in effect to permit the collection of taxes upon income taxable under RSA 77 which is received by persons subject to taxation under that chapter through December 31, 1999, and to permit the distribution of that revenue. Persons who are liable for a tax under RSA 77 who do not report the payment of federal income taxes on a calendar year basis are entitled to such proportion of the exemptions allowed in RSA 77 as the reporting period bears to their taxable year.

II. An amount equal to the difference between the official estimate for interest and dividends for fiscal year 2000 and the commissioner of revenue administration's best estimate of actual interest and dividend's revenue collections for fiscal year 2000 shall be withdrawn from the education trust fund and deposited into the general fund on June 30, 2000.

40 Temporary Rules. The commissioner of revenue administration shall adopt temporary rules without regard to RSA 541-A for the first year of implementation of this act.

41 Transition Year Education Funding; District Foundation Aid Increased. In order to provide sufficient time to implement the provisions of this act and to assure adequate educational funding on as equal and equitable basis as is practicable during the transition period preceding full implementation of the provisions of this act, therefore, notwithstanding the provisions of RSA 198:36, IV, for the fiscal year beginning July 1, 1999 the foundation amount shall be \$5,708 per weighted pupil.

42 Special Rate for Property Tax Payments; Tax Year April 1, 2000. Notwithstanding the provisions of RSA 76:15-a and RSA 76:15-b for the tax year beginning April 1, 2000, the partial payment of taxes assessed shall be computed by taking the prior year's assessed valuation times  $\frac{1}{2}$  of the previous year's municipal tax rate;  $\frac{1}{2}$  of the previous year's county tax rate; and  $\frac{1}{2}$  of the previous year's local school tax rate as adjusted by the commissioner of revenue administration by deducting therefrom the amount of  $\frac{1}{2}$  of the estimated reduction in local school tax rate, if resulting from the implementation of this act and adding thereto  $\frac{1}{2}$  of the statewide education property tax rate for the taxable year; provided, however, that whenever it shall appear to the selectmen or assessors that certain individual properties have physically changed in valuation, they may use the current year's appraisal in place of the prior year's valuation to compute the partial payment.

43 Tax Equity and Efficiency Commission Established.

I. There is established a tax equity and efficiency commission to study issues relating to tax fairness and administrative implementation arising from the passage of this act which may be appropriate for further legislative action.

II. The commission shall consist of the following members:

(a) Eight house members, including the chairperson or vice-chairperson of the finance committee, the chairperson or vice-chairperson of the education committee, and at least 3 members of the minority party, appointed by the speaker of the house.

(b) Five senators, including the chairperson or vice-chairperson of the finance committee, the chairperson or vice-chairperson of the ways and means committee, the chairperson or vice-chairperson of the education committee, and at least 2 members of the minority party, appointed by the senate president.

(c) The governor or designee.

(d) The commissioner of the department of revenue administration or designee.

(e) The commissioner of the department of education or designee.

(f) The state treasurer or designee.

(g) One representative appointed by the New Hampshire Municipal Association.

(h) One representative appointed by the School Administrators Association.

(i) One representative appointed by Claremont Lawsuit Coalition.

(j) One representative appointed by the New Hampshire Society of Certified Public Accountants.

(k) One public member, appointed by the governor.

III. The commission shall study issues arising under this act relating to tax fairness and administrative implementation which may be appropriate for further legislative action. As part of its study, the commission shall consider:

(a) The most appropriate means for evaluating the following types of property for taxation purposes:

(1) Utility property.

(2) Railroad property.

(3) Nuclear station property.

(b) The fairness of the renters credit under the income tax.

(c) The determination of the homestead exemption for owners of multi-unit dwellings or parcels with mixed uses.

(d) Whether a resident fiduciary responsible for payment of property taxes should qualify for the homestead exemption.



(e) The income tax treatment of pension payments received in lieu of social security payments or pension payments from pensions to which the taxpayer's contributions to the pension were previously taxed.

(f) The proper income tax treatment of military personnel on active duty residing out-of-state.

(g) The property tax treatment of non-conventional single owner or unusual residential situations such as nursing homes, dormitories, group homes, residential communities, condominiums and cooperatives.

IV. The members of the commission shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first named senate member and shall be held within 30 days of the effective date of this section.

V. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before September 15, 1999 and on or before December 31, 1999.

#### 44 Position Established; Appropriations.

I. To carry out the financial and educational reporting requirements of this act, there is hereby established within the department of education a full-time temporary position of systems development specialist IV, labor grade 25, for the 15 month period ending June 30, 2000.

II. The sum of \$69,500 is hereby appropriated to the department of education to fund the position created in paragraph I, including salary, benefits, rent, supplies, and travel. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

III. The sum of \$100,000 for the biennium ending June 30, 2001 is hereby appropriated to the department of education to fund the costs necessary to upgrade school districts' computer systems to carry out the reporting responsibilities of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

IV. The sum of \$1,000,000 for the biennium ending June 30, 2001, is hereby appropriated to the department of revenue administration to fund the costs necessary to upgrade municipalities' computer systems to carry out the financial purposes of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

V. The sum of \$9,000,000 for the fiscal year ending June 30, 2000 and \$5,695,000 for fiscal year ending June 30, 2001 is hereby appropriated to the department of revenue administration to fund the costs necessary to implement this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

VI. The sum of \$500,000 for the biennium ending June 30, 2001 is hereby appropriated to the department of revenue administration to fund the costs of establishing a personal and business income tax forecasting and policy analysis unit to provide information to the tax equity and efficiency commission, the governor and the legislature. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

VII. The sum of \$253,700,000 is hereby appropriated from the education trust fund created under RSA 198:39 to the department of education for the fiscal year ending June 30, 2000 for the purpose of funding the requirements of RSA 198:27-37.

45 Returns for Certain Taxes. All business enterprises liable for taxes under RSA 77-E as of December 31, 1999, who thereafter become exempt

from taxes under RSA 77-E because of the repeal of RSA 77-E in section 46 of this act shall make a return of such taxes due in such manner and on such forms as the commissioner shall prescribe.

46 Repeal. The following are repealed:

I. RSA 9:13-g, relative to educational funding commitments to local communities.

II. RSA 76:3, relative to a state property tax.

III. RSA 77, relative to the taxation of income.

IV. RSA 77-A:4, I, relative to an adjustment to business profits.

V. RSA 77-B, relative to the commuter income tax.

VI. RSA 77-E, relative to a business enterprise tax.

VII. RSA 78:20, relative to the applicability of the tobacco tax.

VIII. RSA 83-D, relative to the nuclear station property tax.

IX. RSA 198:1-3, relative to school district taxes.

X. RSA 198:15-i-15-p, relative to the kindergarten incentive program, kindergarten aid program and alternative kindergarten programs.

XI. RSA 198:21, V, relative to the applicability of foundation aid and child benefit service grant recipients in the calculation of average daily membership.

XII. RSA 198:22, V, relative to the applicability of foundation aid and dual enrollment grant recipients in the calculation of average daily membership.

XIII. RSA 198:27-37, relative to foundation aid and alternative foundation aid.

XIV. RSA 261:52-a, relative to notice that the interest and dividends tax may be due.

XV. RSA 391:3, relative to the taxation of common trust funds under RSA 77.

XVI. 1998, 389:15, 16 and 17 relative to educational funding commitments and funding for local education betterment.

47 Effective Date.

I. RSA 76-A, as inserted by section 2 of this act shall take effect April 1, 2000.

II. Section 32 of this act shall take effect July 1, 1999 at 12:01 a.m.

III. Paragraph VI of section 46 of this act shall take effect July 1, 1999 and shall apply to returns and taxes and reports due on account of taxable periods beginning on or after June 30, 1999.

IV. Paragraph XIII of section 46 of this act shall take effect January 1, 2000.

V. The remainder of this act shall take effect July 1, 1999.

**1999-0574s**

### AMENDED ANALYSIS

I. The bill establishes a flat rate education income tax and a statewide property tax to fund public education.

II. This bill:

(a) Establishes an educational adequacy and education financing reform commission.

(b) Establishes a system for calculating and disbursing state grants for educational adequacy.

(c) Appropriates funds to the commission for the purposes of this bill.

(d) Provides that all expenses related to catastrophic special education are constitutionally mandated and shall be borne by the state.

III. The bill repeals the business enterprise tax.

IV. The bill also makes appropriations to the department of education and the department of revenue administration for the purposes of the bill.

SENATOR BELOW: I just want to explain a few of the changes to this amendment. On page two, there is a new declaration of need and purpose just an explanatory clause. It actually starts on page 21 where it talks about "The purpose of this act is" and the new item is on page two, line six, item (d). It says, "Implementing an interim plan for adequate education funding for the biennium ending June 30, 2001 that provides a transition to a more comprehensive and accurate funding plan to be established for the next biennium, with advice from the adequate education and education financing reform commission." The point of that is to make clear that what we are proposing is an interim plan that recognizes the responsible level of adequate education funding level without trying to say that this is the definitive levels that we are proposing here. The bill still does contain for the first year of the biennium, the year ending June 30, 2000 the funding is through the Augenblick or through the traditional Foundation Aid formula at the level of \$250 million total. For the second year of the biennium ending June 30, 2001 it is approximately \$825 million through a formula that is basically the one from SB 49, which begins on page 19 - 21. At \$825 million the total funding is approximately \$4,200 per pupil for the second year of the biennium, in total with the full funding still of the special education and plus the various weighted funding for elementary, high school and the low income factor for the free and reduced lunch programs. That is the major point there. What is happening in terms of the revenue is that the income tax rate has dropped from 4 percent to 3.5 percent. The Renters credit is reduced from \$360 to \$300 and the statewide education property tax is reduced from \$6 to \$5 per thousand. In those reduced levels the revenue sources would generate approximately \$600 million for fiscal year 2001 from the income tax revenue. Approximately \$170 million from the statewide education property tax on non-homestead property. Approximately \$56 million from sweepstakes revenue, which would generate about \$826 million. The other major point of this bill is that it repeals the business enterprise tax. The purpose being, is that now that there would be a personal income tax, there is no longer a need to tax essentially compensation on wages that are paid through the business enterprise tax. I am going to perhaps let Senator Hollingworth explain a little bit more about the thought behind that and the fact that the lost revenue can be made up from other sources in the general fund.

SENATOR HOLLINGWORTH: Yes, the business enterprise tax is repealed, which was estimated at \$39 million for last year and after speaking with Stan Arnold, he believes that it is between \$43 and \$44 million. The total funding for the education that we have in this package comes from the income tax or the statewide property tax, we are not touching any of those other sources that have been considered; such as the money coming back from the tobacco settlement fund, or the possibility of a cigarette tax increase, or any of those others; so we believe that, that the \$43 million could be made up somewhere in that process, but not until we get into the budget will we know what kind of surplus, if any, or what other kinds of things that we will have to look at. But it is fitting that the BET, since they are the ones that are now paying an income tax, they would no longer be asked to do so. They also pay an interest and they would not be asked to do that any longer; so we think that this is the right thing just as the interest and dividends is also repealed under this act so that there is considerable fairness in the tax system so that everyone pays with their ability to pay. Certainly the interest and dividends will be picked up in the income tax, but they will be picked up at a lower level rather than at five, they will currently be paying at four. I think that pretty much covers it.



SENATOR D'ALLESANDRO: Senator Below with the repeal in the interest and dividends tax and the repeal of the BET, what is the total loss of revenue to the general fund?

SENATOR BELOW: It is approximately \$108 million, but there are some offsetting factors here, which, just to make it clear, within the \$825 million funding is the catastrophic aid, building aid and skill center tuition and transportation, which is a total of approximately \$32 million. The kindergarten aid is eliminated because kindergarten aid is replaced with this funding which is at a higher level. I think that we are assuming that the business profits tax revenue sharing is returned to the general fund, although that is not specifically addressed in here but it could be in the budget, which would be approximately another \$20 million. So there is the potential matter of fact of an order about \$50 million.

SENATOR D'ALLESANDRO: So the net loss is \$50 million in general fund revenue?

SENATOR BELOW: Approximately.

SENATOR D'ALLESANDRO: And the way that we are going to make up the \$58 is through the items that you had mentioned? The dollars generated by this tax would create enough money to compensate for the other \$58 million that is lost?

SENATOR BELOW: For the other, yes. To pay for those items, yes.

SENATOR D'ALLESANDRO: We lose \$108 and we are accounting for a portion of that in the monies that would be received that you just articulated on? About half of it is what you said. So the other half would come from?

SENATOR HOLLINGWORTH: You are looking for where the other \$50 would come from? Well I think that clearly that the debate that went on in the other packages that have been there was the tobacco revenue was considered, that is something that we don't know whether we would need that or not, but when we get into the budget and we start to look at the budget and we know what kind of revenues that we have, there is a possibility that you could raise the tobacco money that was in the House bill that was going to be generated. I think that there was about \$48 million. So that is a possibility if you wanted to use that. You are going to have the settlement coming back, you could use that. Right now we know that the business profits tax, the BET and the BPT is running about \$10 million strong. We could possibly use that. It is that the fairness of it is that if the income tax is in this act, that people shouldn't be asked to pay twice and you can't make them pay twice. The point is that it would be unconstitutional, matter of fact to have them pay the BET and the I and D.

SENATOR D'ALLESANDRO: I have no quarrel with that. My question is just how do you make up for the lost money and I guess your answer is we could put in another tax?

SENATOR HOLLINGWORTH: Not necessarily. It depends on what the surplus is that we have or what other things that we find as we go through the process. Clearly it is not the hit on the budget as yours would have been, Senator D'Allesandro.

SENATOR D'ALLESANDRO: But the answer to the question is that we may need another tax?

SENATOR HOLLINGWORTH: It is very possible that we may need another tax.

SENATOR DISNARD: Senator Below, did I misunderstand, did I hear you say that the catastrophic aid money is part of this \$825 million?

SENATOR BELOW: Just as it was in the D'Allesandro amendment that we voted on this afternoon.

SENATOR DISNARD: I don't think so. I think that is a special item in the governor's budget. I think that you better review that.

SENATOR BELOW: See, what is going on here is that because...to implement an income tax, we have to repeal the interest and dividends tax. We take away money from the revenue source from the general fund. So part of the trade-off is taking a few of the educational funding programs and funding them through this revenue source. Catastrophic aid at about \$13 million, building aid at about \$20 million and skill center tuition and transportation at about \$3 million. There is another point. I forgot, currently there is about a \$10 million general fund contribution to foundation aid which is in the budget for the next two years and that could also be another offset that I had forgot about. So that reduces the net loss to approximately \$40 million to the general fund.

SENATOR MCCARLEY: I have no interest in making this hard for you people because I know what you have done, but I have to ask one more time, I am confused. Have we decided to scrap the building aid program, which has yet in any plan, anywhere, been touched. None of us...so I just need a clarification. It is small and it is only \$20 million and these days that is nothing, but I need clarification because I have been asked to vote for this?

SENATOR BELOW: There is no scrapping of building aid.

SENATOR MCCARLEY: But you have rolled that into your distribution plan, those dollars to fund this? Okay, then in my opinion, you have done something fundamental in terms of what we do, in which we all agreed would come up. I am sorry we are debating. I have the answer I think. Thank you.

SENATOR BELOW: I did advocate all of this evening trying not to do this all in one evening. I said that we would be better off taking a day or two to go through this and square it away. If you would like, I would move that we recess and take the time to do that so that we can all get on board and understand this.

SENATOR BLAISDELL: I am not going to have a recess, Senator Below. I would rather do this tonight and get it done.

SENATOR FERNALD: I invited a friend to come with me today to the Senate and she called this morning and said that she couldn't come, she was sick. Given how long that we have dragged on, it is just as well that she didn't come. Her story is important and she wanted me to tell it to the Senate. So I will bring that story to the Senate at this time. She is a widow who lives in Peterborough. She is 73. When her husband died four years ago his pension went with him. She is now living on social security and some interest and dividend income and she is supporting a disabled son. She has an income of \$27,000 and property tax of \$5,200 and she pays income tax, our interest and dividends tax of over \$300. This plan will cut her property tax nearly in half and it will eliminate her interest and dividends tax and she will pay no income tax. That is what this plan is all about. Property tax relief for the people who really need it, who really deserve it, our lower income and middle income homeowners will see a 50 percent cut in what they are paying to support government. So I thank you all for considering this amended bill.

SENATOR MCCARLEY: I do feel that I do not overly take advantage of having to make my case to this body. I try to like, I all of us do, be some-

what careful. I have indicated that I will be supporting this. I like perfection like all of you, but I was willing to live with less than perfection because I said two days ago that I am about doing what I had promised, which is solving this problem. And you people have assured me that the only way that I can do that is to vote for this. I will accept that and I will vote for this, but I have to say, if I could, I have to say that I have also heard a lot about voting for what is right and having principals. I have heard a lot about that. Many of the individuals who have brought that to me and have brought it in incredibly emotionally to me about how important that was, have also told me, having worked very hard on that adequacy number, that \$962 is not what it was about, it was about a billion and how dare I not work harder to look at it that way? I have accepted all of that too. I have said, okay, we have to do what we can do. I have been willing to say let's do what we can do, but tonight I had a revelation. I sat in a room with people that I respect and that I try very hard to work with. I then realized all of a sudden that this was not about an adequate education for our kids. This was about an income tax. I guess that is okay to, but at some point after having been challenged about my principles, very regularly over the past several weeks, I simply have to voice that as a concern from my perspective, that maybe it is time that we acknowledged that we come over here to do things, and solve problems, and to get on with business, and that none of us are finer or better people because of something that we do or say or try to do while we are here. Thank you very much.

SENATOR RUSSMAN: The vote here is certainly difficult for some of us. I think that some of us who are pragmatic and practical have had to swallow hard and swallow long really, in terms of coming to grips with this. I think that we recognize and we know that this is far from over. Obviously the idea of the money coming down to \$825 million and the rate being lowered and things of that nature and the BET, which is a particularly onerous tax for a number of people, going away does help in terms of getting us to a point where we have sufficient numbers to pass a piece of legislation to send to the House. Obviously the House is going to do its work over there. I think that the other thing that is important here is to recognize that by going through this process and I think that the public has the right to know this, that some of us have a certain expectation of what will happen with this legislation when it arrives at the House or when it arrives at the governors desk. By doing this it will certainly, again, move the process forward and allow us to consider other things as well as time goes on in the very near future, but as the deadline looms, we are getting to the 11<sup>th</sup> if not 12<sup>th</sup> hour here in this debate. I certainly commend all of us for getting to where we are and while people cannot bring themselves to support this, I know that they do want to see the process move forward and try to work together to resolve the problem and I commend you all for that.

SENATOR HOLLINGWORTH: I would like to thank everybody who worked very hard through the process and as Senator Russman said, it is not over. I have to say that I am equally disturbed about the level of funding. It was not my choice and has never been my choice that it would be at this level. But this is an interim plan and it is, as we all know and as we all heard many times through this process, that there are commissions established and they are established because we do not have the data and the information in which we can accurately establish what the real costs that we have out there. I feel very saddened by the fact that this isn't a complete document. I feel saddened that the adequacy number is one that I have a hard time establishing because I know what



communities suffer; and that they suffered to fund education and what they continue to do to try to make sure that education for their children is of the highest quality. It is more difficult for the people in Claremont and everywhere else. I am a little disturbed that when it was accused that this wasn't about education and that this was about income tax. This was establishing a fair way, that is, to fund that education, that can be defended and can continue to support education as it grows and it doesn't do so by taking from other things, that most of us find that will not sustain education over the long run. That we know that it would bring us right back to the property taxes again and again and we would be in the same place as we are in today. The reason that we are here today is because the courts ruled that this was an unfair way of taxation. I am disturbed when I hear somebody think that our goals were less than their goals in the wish to achieve the things for our children of this state; because there is not one of us that supported this piece of legislation, that did not care as much as anyone else in this room, that we came out with a number that was what we felt would help property tax relief and that would help education. If I could have done it another way, I would have done it another way. I know that there are many others that feel the same way; unfortunately, we were told repeatedly in this room that either we got on board and were part of getting this done or we were in the way. That is why I ran years ago, because if you are not part of the solution, you are part of the problem. While this may not be the solution for the long run, it is an attempt at starting us to take and have a fair and equitable way, in which we can stand and cherish our children and provide that adequate education. Thank you very much.

**Question is on the adoption of the Finance committee amendment.**

**A roll call was requested by Senator Pignatelli.**

**Seconded by Senator Larsen.**

**The following Senators voted Yes: F. King, Fraser, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Squires, Pignatelli, Larsen, Russman, Wheeler, Hollingworth, Cohen.**

**The following Senators voted No: Gordon, Johnson, Roberge, Francoeur, Krueger, Brown, J. King, D'Allesandro, Klemm.**

**Yeas: 15 - Nays: 9**

**Floor Amendment adopted.**

**Ordered to third reading.**

## **ANNOUNCEMENTS**

### **RESOLUTION**

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order and that the bills ordered to third reading be read a third time by this resolution and all titles be the same as adopted and that they be passed at the present time and that when we adjourn, we adjourn until Tuesday, March 30, 1999 at 10:00 a.m.

**Adopted.**

### **Third Reading and Final Passage**

**SB 64, relative to powers of appointment.**

**HB 93, permitting a dam to be constructed on Rand Pond in Goshen.**

**SB 109**, deleting the witnessing requirement for notices of lease.

**HB 109**, establishing a flat rate education income tax and a statewide education property tax to fund public education and making an appropriation therefor.

**SB 111**, relative to requirements for acknowledgements and jurats by justices of the peace.

**SB 112**, relative to the guardianship of minors.

**SB 124**, establishing a committee to study the integration of technology at the state and municipal level.

**SB 125**, placing restrictions on name changes for certain felons.

**SB 130**, establishing a committee to study issues regarding procedures and standards for selection and supervision of court-appointed guardians ad litem.

**SB 150**, making certain reference changes to the department of youth development services.

**SB 164**, relative to persons exempted from the registration of ophthalmic dispensers.

**HB 207-FN-A**, directing the office of state planning to conduct a study of the effects of sprawl in the state and making an appropriation therefor.

**SB 222-FN-A-L**, relative to guarantee of loans to local development organizations.

**HB 248**, relative to the Monadnock advisory commission.

**SJR 1**, supporting the reduction of the sulfur content of gasoline.

Senator Johnson moved that the business of the day being completed that the Senate now adjourn until Tuesday, March 30 at 10:00 a.m.

**Adopted.**

**Adjournment.**

*March 30, 1999*

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by Father David P. Jones, Senate Chaplain.

One hundred and thirty two years ago today. One government official made a decision that was both costly and questionable. He was viewed as stupid and foolish, politically motivated and totally irresponsible by many members of both parties as well as the American public at large. 1867 Secretary of State William Seward a hundred million dollars to purchase the Alaska territory from Russia. It was a long time before the wisdom of that decision became evident to almost anybody. So the wisdom, or the lack of it, of whatever you decide about anything during this legislative session is really not going to be known for a generation or so. That is a bit scary and it is a bit humbling but, it's good to remember to be careful about what you shout during these days because each of you will be echoing on into the next generation. Let us pray:

*Lord of our tomorrows, give us a strength of character that will enable us to be masters of that best which lies within us rather than slaves to any petty prejudice or short-sided visions that might tempt each of us to be afraid. Free us, Lord, so that we may be careful, kind, bold and wise in every single choice that we make.*

*Amen*

Senator Fernald led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS SUSPENSION OF THE RULES

Senator Gordon moved that the rules of the Senate be so far suspended as to allow for the drafting and introduction of a new bill beyond the deadline for drafting and introduction.

SENATOR GORDON: I rise to propose the introduction of a new bill, which would be an act relative to the Riven Dell School District. As many of you may be aware, the town of Orford which I represent, has entered into a cooperative agreement with towns located in Vermont to create a new school district. This school district will be the first school district in the nation, which is a cooperative district, which will serve K-12, that is something you can be proud of. In order to do that we do require some legislation to be enacted in order to authorize them with an enabling legislation to enter into the agreement. I appreciate your support in that regard. There is a copy of the legislation as it was drafted and it's not in bill form.

(An act relative to the Riven Dell school district.)

**Adopted by the necessary 2/3 vote.**

## INTRODUCTION OF SENATE BILLS

Senator J. King offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, Senate Bills numbered 227 - 228 shall be by this resolution read a first and second time by the therein listed titles, laid on the table for printing and referred to the therein designated committees.

**Adopted.**

### First and Second Reading and Referral

**SB 227**, establishing a gambling business felony. (Sen. Johnson, Dist. 3; Rep. Herbert Hansen, Hills. Dist. 2: **Judiciary**)

**SB 228-FN**, relative to spousal benefits upon the death of certain retired group II members of the New Hampshire retirement system. (Sen. J. King, Dist. 18; Rep. Dyer, Hills 8: **Insurance**)

## HOUSE MESSAGE

The House of Representatives has passed bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 67**, relative to termination of parental rights upon a finding of either child abuse or the commission of certain criminal offenses.

**HB 78**, relative to the counting of votes when the moderator is disqualified.

**HB 90**, removing the prohibition on adoption and foster parenting by homosexual persons.

**HB 206**, relative to restrooms in restaurants.



- HB 223**, relative to waiver of filing fees and petitions for candidates for federal offices.
- HB 229**, changing the registration fee requirement of the commercial feed law.
- HB 238-FN-A**, allowing the production and sale of American ginseng in the state of New Hampshire and making an appropriation therefor.
- HB 250**, relative to authorized regional enrollment area schools.
- HB 261-L**, relative to the official ballot option.
- HB 270**, relative to persons not competent to stand trial.
- HB 288**, relative to the committee to study land management, protection of farmland, rural character, environmental quality and sprawl.
- HB 291**, establishing a study committee for seed sterilization technology or "terminator" technology.
- HB 292**, relative to ballot procedures for constitutional amendments.
- HB 307**, establishing a committee to study the negotiated risk agreements when patients desire to remain in a facility over the recommendations of the department of health and human services.
- HB 324**, repealing certain grounds for granting a divorce for cause.
- HB 355**, relative to the dredging of harbors and channels.
- HB 357**, establishing a committee to study and investigate issues related to investigations, trials, convictions, and sentencing of sex offenders.
- HB 418**, relative to accounts and reporting dates of certain funds in the fish and game department.
- HB 420**, relative to orders for spousal support in domestic relations cases.
- HB 431**, establishing a committee to study methods and processes necessary to retain the traditional uses of White Mountain National Forest land, the impact of any change in designation, and relative to promoting the continual multiple use management of such land.
- HB 490**, enabling cities to permit the mayor to vote at city council meetings.
- HB 513**, relative to approved permissible fireworks.
- HB 515**, extending the indemnification of persons providing clinical services to the department of health and human services.
- HB 520**, relative to an open season for chukar partridge.
- HB 710-FN**, relative to expanding the availability of lifetime licenses for hunting and fishing.
- HB 734-FN-L**, relative to state guarantees of tax anticipation notes issued by municipalities; and relative to teacher non-renewals for the 1999-2000 school year.
- HCR 6**, calling on the President and the Congress to fully fund the federal government's share of the average per pupil expenditure in public elementary and secondary schools in the United States under the Individuals with Disabilities Education Act.

## INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 67 – HCR 6 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

**Adopted.**

**First and Second Reading and Referral**

**HB 67**, relative to termination of parental rights upon a finding of either child abuse or the commission of certain criminal offenses. **Judiciary**

**HB 78**, relative to the counting of votes when the moderator is disqualified. **Public Affairs**

**HB 90**, removing the prohibition on adoption and foster parenting by homosexual persons. **Public Institutions, Health and Human Services**

**HB 206**, relative to restrooms in restaurants. **Public Institutions, Health and Human Services**

**HB 223**, relative to waiver of filing fees and petitions for candidates for federal offices. **Executive Departments and Administration**

**HB 229**, changing the registration fee requirement of the commercial feed law. **Wildlife and Recreation**

**HB 238-FN-A**, allowing the production and sale of American ginseng in the state of New Hampshire and making an appropriation therefor. **Wildlife and Recreation**

**HB 250**, relative to authorized regional enrollment area schools. **Education**

**HB 261-L**, relative to the official ballot option. **Executive Departments and Administration**

**HB 270**, relative to persons not competent to stand trial. **Judiciary**

**HB 288**, relative to the committee to study land management, protection of farmland, rural character, environmental quality and sprawl. **Environment**

**HB 291**, establishing a study committee for seed sterilization technology or “terminator” technology. **Environment**

**HB 292**, relative to ballot procedures for constitutional amendments. **Executive Departments and Administration**

**HB 307**, establishing a committee to study the negotiated risk agreements when patients desire to remain in a facility over the recommendations of the department of health and human services. **Public Institutions, Health and Human Services**

**HB 324**, repealing certain grounds for granting a divorce for cause. **Judiciary**

**HB 355**, relative to the dredging of harbors and channels. **Environment**

**HB 357**, establishing a committee to study and investigate issues related to investigations, trials, convictions, and sentencing of sex offenders. **Judiciary**

**HB 418**, relative to accounts and reporting dates of certain funds in the fish and game department. **Wildlife and Recreation**

**HB 420**, relative to orders for spousal support in domestic relations cases. **Judiciary**

**HB 431**, establishing a committee to study methods and processes necessary to retain the traditional uses of White Mountain National Forest land, the impact of any change in designation, and relative to promoting the continual multiple use management of such land. **Environment**

**HB 490**, enabling cities to permit the mayor to vote at city council meetings. **Executive Departments and Administration**

**HB 513**, relative to approved permissible fireworks. **Public Affairs**

**HB 515**, extending the indemnification of persons providing clinical services to the department of health and human services. **Public Institutions, Health and Human Services**

**HB 520**, relative to an open season for chukar partridge. **Wildlife and Recreation**

**HB 710-FN**, relative to expanding the availability of lifetime licenses for hunting and fishing. **Wildlife and Recreation**

**HB 734-FN-L**, relative to state guarantees of tax anticipation notes issued by municipalities; and relative to teacher non-renewals for the 1999-2000 school year. **Finance**

**HCR 6**, calling on the President and the Congress to fully fund the federal government's share of the average per pupil expenditure in public elementary and secondary schools in the United States under the Individuals with Disabilities Education Act. **Education**

### COMMITTEE REPORTS

**SB 98**, relative to a counselor's duty to report child abuse. Judiciary Committee. Vote 6-1. Inexpedient to Legislate, Senator Wheeler for the committee.

**SENATOR WHEELER:** The judiciary committee voted SB 98 Inexpedient to legislate for the following reasons. Currently the law requires that domestic violence counselors and sexual assault counselors report cases of child abuse to law enforcement authorities. SB 98 would eliminate this requirement in cases where the child is fourteen years old or older. This bill has a wonderful intent and we, all on the committee, appreciate it to encourage teenage victims of child abuse to seek help through counseling. Supporters of the bill felt that teenagers would be more likely to seek help if they did not fear that their case would be reported to the authorities. While the Judiciary committee lauds the intent of this bill, we did not feel it would be in the best interest of these children to remove the reporting requirement. The best protection we can provide to children is to insure that their cries for help are reported to law enforcement authorities that are in a position to stop the abuse from continuing. We understand that this is rarely an isolated case of abuse but something that has a pattern that's continuing. It is likely that SB 98 could undermine the protection afforded by current law. Therefore, the Judiciary committee recommends that you find this bill Inexpedient to legislate. Thank you.

**SENATOR DISNARD:** As a Superintendent of 24 years, my remarks may astound you but, however, I have reservations about inexpedient to legislate on this bill. A respected and experienced counselor in my area discussed with me, with the two young ladies, young adults, the situation that was mentioned in the introduction of the report today. Whereby, these youngsters and some other youngsters whom they are friendly with, are hesitant to speak to authorities about their situations. What they would



feel, and did feel more comfortable with, was speaking to a trained counselor; and to me the most important issue in this kind of a situation is helping the youngster. I'd just like to call your attention that I will vote against this bill because I don't think it is helping youngsters who need help and trained experience when there are sexual assaults.

SENATOR WHEELER: I just want to point out that this bill would carve out domestic violence counselors and sexual assault counselors from the duty of reporting. Leaving that duty still to the professional social workers, psychologists, marriage and family therapist, mental health counselors, pastoral counselors, psychiatrist, doctors, school guidance counselors and others. It would say to one group you don't have to report, but all those other counselors do have to report. We don't think carve outs are a very good idea for this.

SENATOR TROMBLY: One reason that I voted for inexpedient to legislate and feel compelled to rise, is that while the bill focuses on the victim of the abuse of the domestic violence, we need also to focus on the perpetrator. If a young man, let's assume that for this argument most of the perpetrator would be young men, commit an act of domestic violence or sexual assault on their girlfriend. The girlfriend goes to a counselor who does not have to report it and does not report it. That young man is not brought before the system and is not given the services that he requires so that he does not go out and continually victimize other young women or, perhaps, eventually his wife and perhaps his children. What this bill would do in some circumstances is allow for people who could benefit from services, perpetrators, to go free and continue to re-offend. The reason why I voted for it in committee to kill the bill was because I felt that if this type of violence is reported, not only will the victim receive assistance, but more importantly, in some instances, the perpetrator receives services that he needs. We can put an end to this cycle of domestic violence and sexual abuse.

SENATOR GORDON: I just want to support what Senator Trombly just said. What your going to see later from the Judiciary Committee is another bill having to do with incest. One of the things that we discovered in talking about incest is the fact that the crime never gets reported. Therefore, what we are going to be doing is extending the statute of limitations indefinitely on incest so that at some point in time this cycle of domestic perpetration will be stopped. So here we are trying on one hand to create reporting in one bill and exempt reporting in another. I don't think exempting the reporting really serves the purpose that we intend.

### **Committee report of inexpedient to legislate is adopted.**

**SB 110**, allowing for discharges of mortgages by affidavit of a New Hampshire attorney. Judiciary Committee. Vote 8-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: Senate Bill 110 allows attorneys to file discharges of mortgages in certain cases. Under the current law in the state of New Hampshire a discharge of mortgage is supposed to be filed within 60 days after full payment is made. Unfortunately, this is not always done and, in fact, the banking commission testified that it's among the most frequent complaints it receives. Usually financial institutions can satisfy these obligations but, as you know, we have a number of private mortgages in this state and sometimes the formalities are forgotten. As a result, this can put clouds, or place clouds on titles of property, which can be very difficult to

clear after many years. What this would do is enable attorneys in those circumstances to file discharges of mortgage by affidavit and the committee recommends SB 110 ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 122**, allowing certain prisoners to earn good conduct credits reducing such person's minimum sentence. Judiciary Committee.

**Split Report:** Inexpedient to Legislate, Senator Squires for the committee. Vote 4-4

**Split Report:** Ought to Pass, Senator Trombly for the committee. Vote 4-4

**SENATOR SQUIRES:** The committee hearing offered us testimony that was in fact quite persuasive in support of this bill. The point is that last week, I think in the United States, the number of individuals in penal institutions for non-violent crime exceeded a million. It puts tremendous pressure on the penal system. An explosion in cost accompanies it. The majority of these people that are incarcerated for non-violent crimes include drug abuses and so forth. On the other hand, the issue seems also to be evident that our statutes of truth in sentencing ought to mean what they say. We've found ourselves caught between a desire to get people out of jail that probably would be better served by not being there, assuming there's someplace for them to go, which is problematical, versus the fact that the legislature in the past has made an agreement with its citizens that a sentence of x months or years means just that. That does not mean that it can be adjusted now. Currently the law says after a minimum sentence there, you would begin to accumulate time which, in fact, if you behaved yourself in the prison, you would get out at exactly the time of the minimum sentence as given to you under the truth in sentencing act. This bill allows you to reduce that time as you go along. The committee obviously did not come to agreement. I voted on the side of inexpediency because I think truth in sentencing laws should mean that. If we're going to change the system that's the law we ought to change rather than by this method.

**SENATOR TROMBLY:** I voted to pass this bill because I don't think that if we took what would be the preferable route, as I agree with Senator Squires, which would be to change the Truth in Sentencing statute, which was a law that was passed during the given political circumstances at that time. I think we all need to recognize that time and circumstances change and that we as a legislature should respond to the changing time and circumstances. I don't think if we brought a Truth in Sentencing repeal up to the legislature that there is a political will for the legislators in general to do what Senator Squire suggested. Having said that, if you believe as I do that that can't happen, the problems that exist in the penal system now don't go away. They still exist and what are they. The fact is that it is politically popular to make almost every sentence a mandatory sentence. Which means if you don't allow for good conduct credit, the prisoner serves their minimum amount of time and the judge has to sentence them to that minimum amount of time. The judge can't say, and if you do what your supposed to do, if you reach your rehabilitative goals, you can get out early. The other problem we have is that we criminalize everything. We require that jail sentences be imposed of some nature, not necessarily mandatory minimums, but that people who were not sent to jail in the past because it's a politi-

cally popular thing to do, now have to spend time in jail. It leads to a few things, it leads to overcrowding, and we're building a new prison in Berlin. The prison in Concord was hopelessly and illegally overcrowded until we built the prison in Berlin. At the rate we're going, we're going to fill up Berlin in a hurry. We're going to take away the rehabilitative services currently existing in the Laconia prison, and that's going to become a secured facility, and we're going to be building a prison somewhere else. Overcrowding, it's expensive, people in prison do not necessarily receive the services that they should have in order to rehabilitate themselves. We should expect prisoners to go in and mind there "p's and q's." We should expect that. Senator Squires is right, but when you put them in that caldron of a prison environment, people who should do the right thing sometime don't necessarily do the right thing unless you give them some sort of incentive. We're dealing with one population here, non-violent offenders. Non-violent offenders. I'm sympathetic to the argument that if somebody goes in the prison and they act inappropriately, they should be punished, that's true. I'll tell you, my experience in my life as an attorney is that if you give people some sort of a hope, some sort of a goal, some sort of a way out, they will follow that. That's what we want them to do. I don't think we should hoist these people on the petard of a sentence and say you have to serve that and you have to be good at the same time, when, if we're given the opportunity they may not act that way. If we go into them and say look, here's your sentence but, we understand a need for you to correct the situation that brought you before the court in the first place. If you do that, we will recognize that behavior and give you good time credit. That's what we want to encourage, that type of behavior while people are in prison. I think that we need to look at alternatives to sentencing because society cannot afford to warehouse everybody that we would like to think belongs in jail. We just can't do it, society can't bear that burden. Prisons are schools, they're schools for criminals to learn different criminal behavior unless we provide criminals with resources. I'm not certain we do that at this point. For heaven sakes, I think we need to look at these people and say to them we will allow you to work off so to speak through good time, the minimum part of your sentence. I think it's an appropriate way for the criminal system to operate. I support this bill, that's why I sponsored this bill. The simple thing is it might be great as Senator Squires said to change the law which prevents this through the truth in sentencing but, the fact is that facts and circumstances do not go away if we keep things the way they are.

SENATOR JOHN KING: I rise in support of SB 122. These people that are signed on to this bill have no intentions of letting anybody out that belongs in prison. No doubt in my mind whatsoever. They would probably be just the opposite way. They firmly believe that there are some in there non-violent. There's a difference between a violent offender and a non-violent offender. As you go through the country most of the states have truth in sentencing, but it's usually for the violent offender, that's the one we want to make sure there's a lot of watch put on. While serious and dangerous offenders attract much attention, there is little doubt what we should do with them. It's the other group. The non-violent ones, how do we handle them so that we won't make them worse in state prison and get them back into the community. Keep this in mind, if they've got a two to five year sentence, that means, if they get out, they're still going to be under supervision of probation and parole officer for the remainder of their time. If they get out after two years, they have three more years to serve behaving in public, where it really



counts. That's what this bill does. We're not soft on crime, please, that's the cry that goes up. I'm afraid I'm going to be soft on crime. You're doing something to correct crime in the state of New Hampshire. It's supposed to be rehabilitation in and out, and that's what this bill does. I think enough has been said about it. It is a good bill. It isn't ruining truth in sentencing, it's comparing it to what the rest of this country has, and to give people a chance to get out. That not only helps the people outside where they can be doing the work, where they should be, but it also helps the prison. They can have less people to work with, spend their time where it should be spent and work with those people so that when they get out hopefully, they'll behave. It is not a soft on crime at all. I spent 20 years in probation and parole, one of my co-sponsors spent 88 years up in the Berlin county jails and neither one of us consider ourselves soft on crime. No way, shape or manner, so if that's your fear do the right thing and vote this bill through.

SENATOR FRED KING: I want to set the record straight, I didn't spend my time in the county jail but, I did spend 14 years as a superintendent of the county jail. I will tell you that the counties could not operate without the truth in sentencing issue out the way and being able to give good times to the inmates. A lot has changed in the sentencing patterns and the types of crimes that people are being sent to prison for since the good times legislation passed in this state. All of the most recent national publications are talking about the tremendous increase in the number of persons serving time in local and state facilities for crimes that are not against persons or against property. They are drug-related crimes. It simply makes no sense not to allow the professionals who run our system to have some control over the inmates, so that they can separate those that will from those that won't, and those that do from those that don't. The truth in sentencing law simply doesn't work and we need to find a way to reduce the prison population. We need to be able to return these individuals that we have sentenced back into the community, because 99 plus percent will be back in the community someday. We need to turn them back into the community better then when we received them. Being able to give good time in the state prison system like they used be able to do offers the same advantage to the managers of the system as the counties have. It's politically unpopular and I understand that, but we should be accustomed to that, we are doing a lot of things right now that are politically unpopular. We should be cognizant of that. I think that by allowing the corrections officer and the people who manage the system to make a determination about a person's ability to receive treatment, to participate in the programs, to understand what it is to be given orders when they're told to do that. That will enable them to turn back a better product. I would point out the new prison is scheduled to open in Berlin on the first of January. I would also point out that by the time we get through moving inmates back and forth, there would probably be a capacity again in this state, then we'll start to become overcrowded somewhere. The new prison in Berlin is built in such a way that additional 500 beds can be added. My guess is that within a very few years we will be doing that. It's costly, there are better ways to deal with these individuals. I would just close by saying that if you're interested, I have another community in the North Country that would entertain a prison facility when you need it.

SENATOR FRANCOEUR: I speak in opposition to SB 122 and I would ask you to support Senator Squires motion of inexpedient to legislate. I believe it was last year or the year before, that we heard a lot of the debate

on the Senate floor about this bill. That was the first time I had heard it in the Senate myself. The more I looked at it, the more I felt that as some of the other previous speakers did, that when you get sentenced 3.5 to 7.5 years, your minimum is 3.5 years. As far as my understanding is you're **TAPE CHANGE** not going to get out any sooner. My understanding is it can keep the individuals that are in prison, if they are following their good behavior, they're not getting in trouble, that they will earn that 3.5 years time off of their sentencing. I think it's taken a lot of burden probably also off the judicial system because now we have a sentence, when they get imposed, that an individual for a certain crime is three and half to seven years, that you're not out there saying well this judge is going to reduce it because it isn't mandatory. I think it tells the individual that if you're going to do the crime you're also going to do the time. It's not going to be any less than what the statute says. I also ask you to look at, you may say it's politically incorrect, but, as all of us have heard in last year as we voted on those that were here in the Senate, we voted on a new prison. I would like to ask any of you, how many complaints did you hear from people about the \$32 million plus we spent on the prison? I didn't hear one complaint from any constituent saying we spent too much money on a prison. I think that the people are fed up with crime. If we don't do something at a level before it gets to be a violent crime, where there is a weapon or different assaults used that we're going to escalate others. I asked you to support the committee report of inexpedient to legislate. Mr. President, I would like a roll call at the appropriate time.

SENATOR JOHN KING: Senator Francoeur, I heard you say that not one person complained because they built a \$30 million prison in Berlin. I'm disappointed that they did that, because I would like to see them with that same enthusiasm, relative to schools and the kids, so that they won't end up in the that \$30 million prison. Do you agree with me?

SENATOR FRANCOEUR: As far as the enthusiasm, I think all of us are hearing a lot of enthusiasm Senator King. I don't know about you but, I ask anybody and I'm sure I saw Senator Larsen here last week show us a stack about three inches thick on people's enthusiasm. I think there's a lot of it but, I was just saying that I didn't hear anybody complain against us spending the money for a prison last year. I had no constituent calls against it in my district. If there are anybody else I love to hear from them.

SENATOR GORDON: I rise and say that I think I agree with Senator John King, Senator Fred King and Senator Trombly. I'm not sure if this is the vehicle that I want to vote for to accomplish their goals. I believe that there does need to be change in the system. I happen to represent a gentleman in the state prison. He's in there for 7 1/2 to 15 years, he's a stone mason and I happen to believe that his talents could be much better used out doing something productive than sitting in his cell. I would like to see that happen. I think the difference has to be in the way you approach this and I'm not sure that the good time credit approach is what I want to support. I believe that there should be alternative sentencing, alternatives in sentencing that would allow us, or enable us, to deal with these types of situations, when we do have people who could be productive in society but, who for whatever reason have decided to make wrong choices, and having made those choices now find them subject to the truth in sentencing law and they find themselves serving minimum sentences. I don't think that really what I want to do, once we have decided that they should serve some minimum sentence, is then vest the authority in the prison system to decide for us that they should serve something less.

There is a method of doing that right now and that is that a prisoner, if in fact they have in fact served with good time, can petition the court, can go to court and have their sentence reduced. That is a relatively common procedure as I'm sure others may recognize. I was struck by John Stevens testimony before the Judiciary Committee a couple of weeks ago. Many of you are familiar with the little program that was put together that ran on public television. The gentleman who, here in Concord, was driving drunk, ran into a snow plow and a passenger in his car died. The inmate made a film, a half an hour film, which I thought was extremely effective on the issue of drunk driving and the impact it could have on your life. In fact, having made that film, and having taught in the prison, and having served with good time, he went to court. There was a petition and he received a sentence reduction and he was let out of prison early. The fact is that there is a mechanism available to let that happen today even under the current system. The court makes that decision, not correction officers. I feel that just as the King cousins, and Senator Trombly said here, is that there is in fact a need to change the sentencing in the state. But I don't think it's necessarily in terms of revamping the current system, I think it's looking in ways of having alternative sentencing to make some of the people that we have in fact incarcerated more productive and effective members of our society. The bottom line is, I commend you for the bill as I always have Senator King, but for me it's just not the right vehicle.

SENATOR FERNALD: Some people have spoken in favor of changing truth in sentencing, at least as it applies to non-violent criminals. My understanding is that would give some discretion to judges. This bill addresses correction officers to give them some discretion. I guess my question for you is, people have talked about changing the sentencing law, which affects what happens in the courtroom but, do you favor the idea of correctional officers having some discretion, some ability to give good time credit or something equivalent to the prison population?

SENATOR GORDON: I think I do approve the idea of them having some discretion, and they do exercise that discretion today. We as a society through the current system say that there will be a minimum sentence and then the corrections officer are in fact given the discretion to decide whether or not they should serve more than the minimum sentence. I'm not opposed entirely to them having discretion. The question is should they have discretion to allow prisoner to get out and avoid what is right now a minimum sentence. I guess, I might oppose that aspect of it.

SENATOR MCCARLEY: Senator Gordon in the description of the situation that you mentioned a few minutes ago that occur in Concord. That appeared to be a situation where a person can indeed petition the court to get out earlier than their minimum sentence time as I understood it. In this case that apparently happened, which sounds like there some idea that that was a good thing. Without the kind of, what sounds like press, what have you that went on with that experience. How difficult is it and how often does it occur that we actually have that procedure going on across the state? Do you have any way of being able to answer that?

SENATOR GORDON: I don't practice a lot of criminal law so I'm not sure if I know the answer to that. I know that I had represented two prisoners in petitions to reduce their sentences. They have been heard before the court in both cases, one case successfully and one not. So I know that it is a practice that continues. I have a gentleman in my community who was sentenced to a two-year term and the corrections people



felt very strongly that he did not deserve to be in prison, and he was allowed to serve only one year and go on probation for the remainder period of his term, so it does in fact happen.

SENATOR J. KING: Senator Gordon, don't you think that this bill would do just what you want to do? But it would give every non-violent offender, any way, the opportunity to request that, or have it spelled out, so that there is no question in mind and everybody would be able to reap the rewards from it? Some of these can't petition through lawyers or whatever because they probably don't know the procedure to follow. If you have it in the statute, don't you agree with me, that that would be best for the inmates at the state prison?

SENATOR GORDON: No, I don't agree with you that that would be best and I can tell you that it has been my experience that the prisoners in the prison are very well aware of the law.

SENATOR FERNALD: In the past couple decades we have had a big debate on incarceration. Some people have argued that it should be for rehabilitation, and others have argued that it should be for punishment. I think, actually, in recent years, sort of a third idea has gained currency, which is there are some people that we want to take out of circulation and that is why we put them in jail. The minimum sentencing laws, I think, have sprung out of particularly that third impulse and, in the process, we have swept in the non-violent people as well as the violent people into this minimum sentencing situation. A number of speakers have said that this is contrary to minimum sentencing so we should oppose it. But, if we were to change minimum sentencing, that puts discretion at the judge level and we are talking about discretion at the corrections level. I think that it makes sense that there would be some discretion at the corrections level, and I will vote in favor of this bill and I would ask you all to consider it in that light. Thank you.

Senator Johnson moved to have **SB 122**, allowing certain prisoners to earn good conduct credits reducing such person's minimum sentence, laid on the table.

**Adopted.**

### LAIID ON THE TABLE

**SB 122**, allowing certain prisoners to earn good conduct credits reducing such person's minimum sentence.

**SB 133-FN**, establishing a process for reviewing judges. Judiciary Committee. Vote 6-1. Inexpedient to Legislate, Senator Fernald for the committee.

SENATOR FERNALD: As I understand it, this bill was introduced by people who felt that judges should be made accountable. The problem with this bill is that it would break down the walls between the separation of powers. It would open up judges to political influences. Our judges are repeatedly asked to rule on the issues that are of great political or economic importance and politically people are often in court. This bill would provide for 5-year review of judges by politicians. Judges are going to change the way that they hear cases, and see cases, and rule on cases, if we are going to open them up to these political influences. I appreciate the thought that was behind the proponents of this bill. We do have a judicial conduct committee which makes judges accountable and I think that the judiciary has recognized the need for them to be responsive to the public and their duties. There recently has been enacted by

or adopted by the judiciary and evaluation process, whereby people who are involved in the judicial system are asked to evaluate judges and the evaluations are passed back to the judges to provide some accountability without political influence. I ask you to support the committee's recommendation that this be found inexpedient to legislate.

Senator Roberge moved to have **SB 133-FN**, establishing a process for reviewing judges, laid on the table.

**A division vote is requested.**

**Yeas: 8 - Nays: 11**

**Motion failed.**

**Recess.**

**Out of Recess.**

**Question is on the committee report of inexpedient to legislate.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Roberge.**

**The following Senators voted Yes: F. King, Gordon, Fraser, McCarley, Trombly, Disnard, Blaisdell, Fernald, Squires, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler, Hollingworth, Cohen.**

**The following Senators voted No: Johnson, Below, Roberge, Francoeur, Krueger, Brown, Klemm.**

**Yeas: 17 - Nays: 7**

**Committee report of inexpedient to legislate is adopted.**

#### **TAKEN OFF THE TABLE**

Senator Johnson moved to have **SB 122**, allowing certain prisoners to earn good conduct credits reducing such person's minimum sentence, taken off the table.

**Adopted.**

**SB 122**, allowing certain prisoners to earn good conduct credits reducing such person's minimum sentence.

**Question is on the motion of ought to pass.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Pignatelli.**

**The following Senators voted Yes: F. King, Johnson, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Larsen, J. King, Russman, D'Allesandro, Wheeler, Hollingworth, Cohen.**

**The following Senators voted No: Gordon, Fraser, Roberge, Squires, Pignatelli, Francoeur, Krueger, Brown, Klemm.**

**Yeas: 15 - Nays: 9**

**Adopted.**

**Ordered to third reading.**

**SB 139**, relative to self-proved wills and making reference changes. Judiciary Committee. Vote 7-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: Senate Bill 139 makes certain changes in regard to self-proving wills. Self-proving wills are wills, which are accepted by the court, unless someone expresses an objection after it is filed. Last year we enacted provisions of the Uniform International Will Act. Under those provisions, they would not satisfy the requirements for self-proving wills. This legislation would make wills prepared according to the Uniform International Will Act subject to the provisions of...would make wills prepared according to the Uniform International Will Act self-proving. This would also make the wills, which are prepared in other states that qualified as self-proving wills in other states or other countries, self-proving in the state of New Hampshire. Finally, this bill would enable an executor to file a will and a death certificate with the probate court in the event that a person dies without assets, without having to file any further or additional written paperwork. The committee recommends SB 139 as ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 143-FN**, relative to penalties for incest. Judiciary Committee. Vote 5-0. Ought to Pass, Senator Brown for the committee.

SENATOR BROWN: The committee unanimously voted this bill out as ought to pass, but I understand that there is a question that came to our attention and I think that somebody else would like to address that.

SENATOR PIGNATELLI: We would like to recommit this bill to the Judiciary Committee to look at a new paragraph that we did not focus on during the hearing.

Senator Pignatelli moved to recommit.

**Adopted.**

**SB 143-FN**, is recommitted to the Judiciary Committee.

**HB 73**, extending the reporting date of the commission to study the effects of and jurisdiction over alternative agricultural products. Wildlife and Recreation Committee. Vote 6-0. Ought to Pass, Senator K. Wheeler for the committee.

SENATOR WHEELER: House Bill 73, extending the reporting date of the commission to study the effects of and jurisdiction over alternative agricultural products, met over the summer and, at the same time, the Department of Agriculture and the Department of Fish and Game were meeting and working on rules to deal with an emerging issue of what is sometimes called "Boutique Farming." These alternative agricultural products are actually animals. They are actually Llamas, Buffalo, Ostriches, and fallow deer, emu's that are all being raised on farms in New Hampshire; and there has been some question over the health status of the animals and who has the authority to inspect and make rules regarding them. We think that things are working well right now with Fish and Game and the Department of Agriculture, but the commission would like to stay in effect for a year to oversee this process. So the bill just extends the reporting deadline until November 1, 2000. It does require an interim report by November of this year. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 59-L**, relative to bonding of animal owners convicted of animal cruelty. Wildlife and Recreation Committee. Vote 4-3. Ought to pass with amendment, Senator Roberge for the committee.



1999-0577s

08/01

**Amendment to SB 59-LOCAL**

Amend RSA 644:8, IV(b) as inserted by section 1 of the bill by replacing it with the following:

*(b) If a person convicted of cruelty to animals appeals the conviction and any confiscated animal remains in the custody of the arresting officer or the officer's designee pending disposition of the appeal, in order for the appellant to maintain a future interest in the animal, the trial court may require the appellant to post a bond or other security in an amount not exceeding \$2,000 for each animal in custody for costs expected to be incurred for the board and care of the animal during the appeal. If the conviction is affirmed on appeal, the costs incurred for the board and care of the animal shall be paid to the custodian from the posted security and the balance, if any, returned to the person who posted it.*

1999-0577s

**AMENDED ANALYSIS**

This bill allows the court to require a person convicted of animal cruelty to post bond in an amount not exceeding \$2,000 for each animal in custody, in order to maintain a future interest in the animal, while an appeal is pending. The bond is used to pay board and care costs during the appeal.

SENATOR ROBERGE: This bill allows the court to require a person convicted of animal cruelty to post a bond in order to keep an interest in the animal during the appeal process. The need arises when the cost of board and care of animals, whose owners are charged with animal cruelty as well as those who appeal their convictions. These costs are most often borne by Human Societies and municipalities, in some cases where a number of animals are involved, and their treatments are severe, the cost of board and veterinarian services may be very significant. The bill applies only where the owner has been convicted and is appealing the conviction. It applies only to the costs of board and care during the appeal process. The amount of the bond is capped at \$2,000 per animal. The majority of the committee concluded that it was reasonable for those convicted of cruelty and animal offense and a criminal offense to pay their fair share of the cost of what they have done. I urge ought to pass. Thank you.

SENATOR GORDON: Senator Roberge, in reading the amendment, it makes specific provisions that if the conviction is affirmed, then the monies could be used to pay for the board and the care of the animal, but it doesn't make any provision that the money or the security would be returned to the person if, in fact, it is not affirmed.

SENATOR ROBERGE: If in fact they do not use it all up?

SENATOR GORDON: I am just wondering if that shouldn't specifically be included in the amendment?

**Recess.**

**Out of Recess.**

SENATOR GORDON: The concern which I raised in my question, I also have another concern in regard to the \$2000 preventing somebody from having the ability to appeal. I favor the purpose of the bill, but I have a problem with the way that it is currently written. I move that the bill be recommitted to committee.

Senator Gordon moved to recommit.

**Adopted.**

**SB 59-L**, is recommitted to the Wildlife and Recreation Committee.

**REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bills:

**HB 93**, permitting a dam to be constructed on Rand Pond in Goshen.

**HB 248**, relative to the Monadnock advisory commission.

Senator D'Allesandro moved adoption.

**Adopted.****ANNOUNCEMENTS****RESOLUTION**

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time and that the bills ordered to third reading be read a third time by this resolution and all titles be the same as adopted and that they be passed at the present time and that when we adjourn, we adjourn until Thursday, April 1, 1999 at 10:00 a.m.

**Adopted.****Third Reading and Final Passage**

**HB 73**, extending the reporting date of the commission to study the effects of and jurisdiction over alternative agricultural products.

**SB 110**, allowing for discharges of mortgages by affidavit of a New Hampshire attorney.

**SB 122**, allowing certain prisoners to earn good conduct credits reducing such person's minimum sentence.

**SB 139**, relative to self-proved wills and making reference changes.

Senator Johnson moved that the business of the day being completed that the Senate now adjourn until Thursday, April 1, 1999 at 10:00 a.m.

**Adopted.****Adjournment.**

*April 1, 1999*

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by Rev. David P. Jones, Senate Chaplain.

Before addressing the subject at hand, we need to think about three American soldiers, who right now are captives somewhere in Serbia; and

we also need to think about the millions of people affected by dislocation and hatred, it puts anything that we deal with in New Hampshire in a different perspective.

This is no April Fool's Day joke. There seems to be a little tension and stress within the body politic these days. Just remember that a violin string will only sing its song of beauty when it is stretched taut to a level of tension just short of its breaking point. It seems to me that that is right where you are. Fight the temptation to underreact. This is a big deal. You must do the right something. But also, avoid the temptation to overreact. No matter what you choose to do, this is not the end of the world.

*Divine Maestro, come out of the audience and be the conductor of this symphony today. May these political musicians play their instruments carefully, well and together – so that what comes forth from them may not hurt our ears or break our hearts – but rather may be a melody that is clearly recognizable as music that comes off of your score. Amen*

Senator Squires led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS

### COMMITTEE REPORTS

**SB 27**, relative to assessment fee schedules for trust companies and banks. Banks Committee. Vote 4-0. Ought to Pass, Senator Fraser for the committee.

**SENATOR FRASER:** This bill changes the ways that trust companies and trust assets of banks are assessed to determine fees. There is currently one rate for all of the companies, and this bill sets up a seven tiered system based on the amount of assets. A fee structure of this nature will be very attractive to larger companies because their fees would be reduced. A schedule of this nature makes the burden of paying fees more even, instead of a few large companies bearing the brunt of the fee collection. The committee was unanimous in recommending this bill as ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 202-FN**, relative to collective bargaining rights of public employees. Executive Departments and Administration Committee. Vote 7-0. Rereferred to Committee, Senator D'Allesandro for the committee.

**SENATOR D'ALLESANDRO:** Senate Bill 202 would have clarified procedures relative to collective bargaining with respect to public employees. The committee felt that because of the complexity of the changes proposed in SB 202 and also because of the uncertainty of the effects that these changes would have on public employers, the committee unanimously recommends that this bill be re-referred.

**Adopted.**

**SB 202-FN is rereferred to the Executive Departments and Administration Committee.**

**SB 25**, expanding the waiver of administration under the law regarding decedents' estates. Judiciary Committee. Vote 7-0. Ought to pass with amendment, Senator Gordon for the committee.



1999-0618s

08/01

**Amendment to SB 25**

Amend the bill by replacing section 1 with the following:

1 Decedents' Estates; Waiver of Full Administration. Amend RSA 554:1-a to read as follows:

554:1-a Waiver of **Full** Administration:

I. As used in this section, "fiduciary" shall mean any executor or administrator, including voluntary administrator, special administrator, administrator with will annexed (hereafter administrator w.w.a.), and administrator de bonis non.

**II.** Notwithstanding any provision of law, whenever a deceased dies testate and the surviving spouse or, if no spouse, an only child is named in the will as the sole beneficiary of the deceased's estate and ~~has also been~~ **is** appointed to serve as ~~executor or administrator with will annexed, hereafter administrator w.w.a.]~~ **fiduciary; or whenever a deceased dies intestate and the surviving spouse or, if no spouse, an only child is the sole heir of the deceased's estate and is appointed to serve as fiduciary**, there shall be no requirement for an inventory of the estate, no requirement for a bond, and no requirement for an accounting for assets. ~~[Any interested person may petition for a full administration of the estate within 6 months after the original grant of administration, and such petition may be granted by the probate court for good cause shown.]~~ Administration of the ~~[will]~~ **estate** shall be completed upon the **fiduciary's** filing, **and the probate court's approval** of an affidavit of administration ~~[with the probate court]~~. Such filing shall occur not less than 6 months nor more than one year after the date of appointment of the ~~[executor or administrator w.w.a.]~~ **fiduciary**. The affidavit of administration shall state that to the best of the knowledge and belief of the ~~[executor or administrator w.w.a.]~~ **fiduciary** there are no outstanding debts or obligations attributable to the deceased's estate and shall list all real estate owned by the decedent at the time of death, including the location, book and page. If the ~~[executor or administrator w.w.a.]~~ **fiduciary** fails to file the affidavit of administration within the time prescribed above, the ~~[executor or administrator w.w.a.]~~ **fiduciary** is in default. The register of probate shall give notice of the default to the ~~[executor or administrator w.w.a.]~~ **fiduciary** by first class mail within 10 days after the default. The register of probate shall issue a citation notice in accordance with RSA 548:5-a. ~~[If the executor or administrator w.w.a. is unable to complete the administration of the estate, administration may be completed pursuant to RSA 553:7.]~~

**III.** Any interested person may petition for a full administration of the estate at any time from the original grant of administration to the filing of the affidavit of administration, and such petition may be granted by the probate court for good cause shown.

**IV. Disclaimer, ademption of legacies, or declination to serve as executor may be effectively used to cause the estate to conform to the requirements of paragraph II.**

**V. If the fiduciary is unable to complete the administration of the estate, administration may be completed in accordance with this section by the successor fiduciary.**

**VI. If both this section and RSA 553:31 are applicable to an estate, this section shall take precedence.**

Recess.

**Out of Recess.**

**SENATOR GORDON:** Senate Bill 25 expands the waiver of administration under the law regarding the decedents, estates. Several years ago we adopted procedure in regard to waiver of administration to lower the cost of probate administration for spouses and only children and currently under the law, this only applies to circumstances where the decedent leaves a will. This would expand that law to make the probate process less costly, less expensive and less time consuming for people and not only for people with wills, but people who die without wills as well. The committee recommends this bill as ought to pass.

**Amendment adopted.****Ordered to third reading.**

**SB 44-FN**, relative to physician aid-in-dying for certain persons suffering from a terminal condition. Judiciary Committee. Vote 6-1. Rereferred to Committee, Senator Wheeler for the committee.

**SENATOR WHEELER:** I rise to recommend that SB 44 be re-referred to the Judiciary Committee. This bill, obviously, has immense moral and personal implications for those who suffer from a terminal condition, for their loved ones and for society in general. It would allow a mentally competent person who is 18 years of age or older and who has been diagnosed as having a terminal condition to request a prescription for a medication which will allow the patient to control the time, place and manner of such patient's death. This bill allows a terminally ill patient to provide for such choice through a document that is witnessed and signed in the same manner as the Living Will. In a very emotional hearing, people testified for and against the bill. This bill is modeled on the Oregon statute. The Judiciary Committee would like more time to evaluate reports from Oregon and more time to discuss the serious ethical, medical and emotional issues involved. For those reasons, we recommend to you re-referral. Thank you.

**Adopted.****SB 44-FN is rereferred to the Judiciary Committee.**

**SB 56**, amending the law relative to who may adopt. Judiciary Committee. Vote 7-0. Ought to pass with amendment, Senator Squires for the committee.

**1999-0617s**

**04/09**

**Amendment to SB 56**

Amend the bill by replacing all after the enacting clause with the following:

1 Adoption; Who May Adopt Amended. Amend RSA 170-B:4, V to read as follows:

V. A married individual without the other spouse joining as a petitioner, if the individual to be adopted is not such married individual's spouse; and if:

(a) The other spouse is a parent of the individual to be adopted and consents to the adoption;

(b) The petitioner and the other spouse are legally separated; [or]

(c) The failure of the other spouse to join in the petition is excused by the court by reason of prolonged unexplained absence, unavailability, or circumstances constituting an unreasonable withholding of consent[-]; or

*(d) The other spouse consents to the adoption and the person to be adopted is over the age of 18.*

2 New Paragraph; Adoption; Effect of Petition and Decree of Adoption Amended. Amend RSA 170-B:20 by inserting after paragraph II the following new paragraph:

II-a. Notwithstanding any provision of law to the contrary, upon the issuance of a final decree of adoption in which only one spouse is petitioner, the adopted child shall be considered the child of the adopting spouse. Such child's relationship to the birth parent of the same sex as the non-adopting spouse shall not be altered if the child and the birth parent so agree. Such child shall no longer be deemed to be the child of such child's natural parent of the same sex as the adopting spouse.

3 Effective Date. This act shall take effect 60 days after its passage.

**1999-0617s**

### AMENDED ANALYSIS

This bill revises the current adoption law to allow a married individual to adopt another person provided that such other person is not the married individual's spouse.

SENATOR SQUIRES: **TAPE INAUDIBLE** change in the current adoption laws to address the following situation. My constituent entered into a relationship with a young man as a big brother. He did this for a period of several years until the big brother relationship was supposed to have ended. The young man was coming from a broken family and he eventually went on and graduated from Boston University, and through a variety of circumstances, the young man and my constituent wish to enter into a relationship of father and son. The boy's mother subsequently remarried and the mother came and testified as to the correctness of this. Her desire is that it happen. The stepfather has no objection. My constituent's wife has no objection and the son and the young man and my constituent testified. This cannot happen because of an odd way in which the adoption laws are written. So the bill addresses that problem and allows this to occur, as it should. There is no objection. We have discussed this with representative adoptive agencies, we have had legal reviews and it is a good bill. It is a small bill, but for this family, for this young man and for this adult male, it will make a tremendous difference. I ask you to pass this bill. Thank you.

**Amendment adopted.**

**Ordered to third reading.**

**SB 93**, relative to self-service storage facility liens. Judiciary Committee. Vote 6-0. Ought to pass with amendment, Senator Trombly for the committee.

**1999-0620s**

**05/09**

### Amendment to SB 93

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; Self-Service Storage Facility Liens. Amend RSA by inserting after chapter 451-B the following new chapter:

#### CHAPTER 451-C

##### SELF-SERVICE STORAGE FACILITY LIENS

451-C:1 Definitions. In this chapter:



I. "Lienholder" means a person entitled to enforce a lien or security interest legally acquired and properly recorded in accordance with RSA 382-A or RSA 261.

II. "Motor vehicle" means a motor vehicle as defined in RSA 259:60, a motorcycle as defined in RSA 259:63, and any boat, watercraft or motorized vehicle including any "off highway recreational vehicle" as defined in RSA 215-A:1, VI.

III. "Occupant" means a person, or any agent or representative of the person, entitled to the use of storage space at a self-storage facility under a rental agreement, to the exclusion of others.

IV. "Owner" means the owner, operator, lessor or sublessor of a self-service storage facility, the owner's agent, or any other person authorized by the owner to manage the facility, or to receive rent from an occupant.

V. "Personal property" means moveable property not affixed to land, and includes, but is not limited to goods, merchandise, motor vehicles, and household items.

VI. "Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to such space for the purpose of storing and removing personal property. A self-service storage facility is not a warehouse as the term "warehouse" is used in RSA 382-A:7.

451-C:2 Storage Lien. Any owner of a self-service storage facility shall have a lien upon all personal property located at the self storage facility so long as the personal property shall remain in the possession of the owner, or, in accordance with any rental agreement or lease, shall have a lien for unpaid rent, charges, fees or expenses due for storage, care, or sale of the personal property. The lien attaches as of the date the personal property is brought to the self-service storage facility.

451-C:3 Removal and Disposal of Personal Property. If any of the rent, charges, fees or expenses referred to in this chapter shall remain unpaid for 5 days, the owner may place a lock on the storage unit, in addition to any lock placed thereon by the occupant. The owner may deny access to the unit until the unpaid rent, charges, fees or expenses are paid in full by the occupant. On or after the tenth day of nonpayment, the owner may remove the occupant's lock as well as the owner's lock, remove any personal property from the unit, and retain such personal property for a total of 30 days from the date payment was due. If after 30 days, any of the rent, charges, fees or expenses shall remain unpaid, the owner may, after first satisfying the notice provisions of RSA 451-C:5 and RSA 451-C:6, unless exempted by RSA 451-C:7, proceed to sell such personal property to satisfy the lien. Proceeds from the sale shall be distributed pursuant to RSA 451-C:4.6

451-C:4 Notice to Lienholder.

I. An owner shall inquire in writing, by certified mail return receipt requested, to determine from the division of motor vehicles, the secretary of state and the town clerk with regard to a motor vehicle, and from the secretary of state and town clerk with regard to other personal property, whether a lien exists upon the title to said motor vehicle or other personal property. If no lien is found, or in the case where the inquiry had been made in writing and no response is received from the division of motor vehicles, the secretary of state, or the town hall within 14 days after such inquiry is mailed, the owner may proceed to sell or otherwise dispose of such personal property as prescribed by this chapter.

II. If determination is made under the procedure described in paragraph 1 that a lien exists, a notice of sale under this chapter shall be

sent by registered or certified mail to the last known address of each holder of a security interest or lienholder in accordance with RSA 382-A:9. The notice shall state the time and place of the sale, the property to be sold, and the amount of the rent, charges, fees or expenses owed. The notice shall be sent at least 20 days prior to the date of the sale, except that in the case of a motor vehicle, notice shall be sent at least 30 days prior to the date of the sale. Notwithstanding any other provision of this chapter, any lienholder having a properly perfected lien or security interest shall be entitled to remove such personal property from the owner's possession or from the occupant's self-storage unit within 20 days of the date of mailing of the notice of the sale, without attachment of the lien established under RSA 451-C:2 or any further obligation to the owner of the self-service storage facility. The lienholder's right to possession of the personal property is established under this chapter notwithstanding the lack of breach by the owner of such personal property under the debt instrument or security agreement creating the lien or security interest on such property. The owner shall not be responsible for determining priority as between any competing lienholders. If the owner and the lienholder who has received the notice agree to store the personal property at the facility, the lienholder shall pay the amount of the rent, charges, fees or expenses due from and after the date of the notice to the lienholder, and pay the monthly rental fee until such personal property is removed from the facility.

451-C:5 Notice of Sale. A notice of the sale shall be served upon the occupant in person or by registered or certified mail at the last known address, no less than 14 days before the sale, stating the time and place of sale, the property to be sold and the amount of the rent, charges, fees or expenses owed.

451-C:6 Sale. If any of the rent, charges, fees or expenses referred to in this chapter shall remain unpaid for 30 days, and after complying with the provisions of RSA 451-C:4 and RSA 451-C:5, the owner may sell such personal property at a private or public sale, and the proceeds shall first be applied to satisfy such rent, charges, fees or expenses. Proceeds remaining after the sale and payment of rent, charges, fees or expenses to the owner shall then be paid to any lienholders of record, as their interests may appear, with any remaining proceeds to be paid to the occupant.

451-C:7 Abandoned Personal Property. Any occupant whose rent is past due or who has left the self-storage unit unlocked, shall be presumed to have abandoned any and all personal property with a value under \$500 left in such unit. The owner may remove such personal property from the self storage unit and shall retain such personal property for a period of 30 days. If after the 30 days, the occupant does not claim such personal property and any of the rent, charges, fees or expenses shall remain unpaid, it shall be conclusively presumed that the property is abandoned. If there is no lienholder of record, the owner may dispose of the personal property without notice to the occupant.

451-C:8 Liability. An owner acting in accordance with the provisions of this chapter shall not be liable to the occupant or lienholder for personal property disposed of under the provisions of this chapter.

451-C:9 Purchaser. Provided that the provisions of this chapter are complied with by an owner conducting a sale of personal property, a purchaser in good faith of personal property under the provisions of this chapter shall take the personal property free and clear of any rights of an occupant against whom the liens were placed by a lienholder.

2 Effective Date. This act shall take effect 60 days after its passage.

SENATOR TROMBLY: Mr. President and members of the Senate, SB 93 establishes a process by which property left in a self storage unit can be deemed to have been abandoned by the owner. It sets up procedures for the disposition of that property and further, it has many safeguards for the owners of that property relative to notice requirements, of the owner of the self storage facility having to notify the owner prior to disposition of the property. The legislation establishes a procedure which is sorely needed and is quite glaring absent in the current law relative to the disposition of property in self storage facilities. The main benefit of this that it sets up a uniform and consistent standard in process by which this type of property will be disposed of. We would ask that you support the amendment, which replaces the entire bill and does everything that I just said to you. Thank you, Mr. President.

**Amendment adopted.**

**Ordered to third reading.**

**SB 121**, requiring reports to the department of justice following certain DWI arrests and refusals to take alcohol concentration tests. Judiciary Committee. Vote 5-2. Ought to pass with amendment, Senator Fernald for the committee.

**1999-0621s**

**09/10**

### **Amendment to SB 121**

Amend the bill by replacing section 1 with the following:

1 Reports to Attorney General Required. Amend RSA 265:82-c, II to read as follows:

II.(a)(1) Notwithstanding any other provision of law to the contrary, in any case in which a person is arrested for and charged with the offense of driving or attempting to drive a vehicle on any way while under the influence of intoxicating liquor or drugs or while having an alcohol concentration of 0.08 or more and that charge is reduced from a second or subsequent offense to a first offense or in which the original charge is reduced to or in any manner substituted with another charge or a nolle prosequi entered in exchange for an agreement to plead guilty or nolo contendere to another charge, the prosecutor shall submit to the attorney general a written report describing such agreement.

(2) Whenever a person refuses a test as provided in RSA 265:92 or submits to a test described in RSA 265:84 which discloses an alcohol concentration which is above the legal limit for such person, a written report shall be filed by the law enforcement officer with the attorney general if:

(A) *The arrest does not result in a court complaint;*

(B) *The law enforcement officer does not file a report under RSA 265:91-a; or*

(C) *The case is not proessed or plea bargained under RSA 265:82-c or any other law.*

(b) All such written reports shall be submitted to the attorney general on a monthly basis. The report shall contain such information as the attorney general shall prescribe; provided, however, that [he] *the attorney general* shall not be subject to the provisions of RSA 541-A in prescribing such information. The report required by this paragraph shall be a public record and shall be available for public inspection as provided in RSA 91-A:4.



1999-0621s

## AMENDED ANALYSIS

This bill requires law enforcement officers to make reports to the attorney general following certain DWI arrests and refusals to take alcohol concentration tests.

SENATOR FERNALD: On behalf of the committee, I speak in favor of this bill as amended. We heard testimony that there are cases of DWI where people blow over the limit on the Breathalyzer and then the case is never prosecuted. The concern here is that the deals are being made for DWI cases not to be prosecuted. All that this does, it does not take away the prosecutorial discretion of the local people, but it requires that a report be filed with the state when this is happening. Right now this happens and it never sees the light of day. The feeling is, that by requiring the report to be made when there is a prima facie case of DWI but it is not prosecuted, that local departments will be less likely to do it and the cases that should be prosecuted will be prosecuted more frequently. The bill was amended to take out some provisions where cases that were dismissed by a judge would be reported as well, we decided that was really getting a whole different area. I ask you on behalf of the committee to support this bill.

**Amendment adopted.**

**Ordered to third reading.**

**SB 138**, relative to joint tenancy with rights of survivorship. Judiciary Committee. Vote 5-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: This bill, SB 138, deals with regard to joint tenancy with rights of survivorship over automobiles. It actually makes clear the existing law in the statutes in regard to ownership of vehicles between two nonrelated parties. Presently when two nonrelated parties can own a vehicle together and they can put on the title the word "or" and either one of those individuals may be able to sell the vehicle. The Department of Motor Vehicles is taking the position that when one of those two people dies, there is a necessity that an estate be probated in order for the remaining person or the surviving person to sell or convey the vehicle. This would correct that policy which is currently being administered by the department to enable the survivor to sell the automobile without having to open up a probate estate. We urge ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 189-FN**, relative to the establishment of a civil rights act. Judiciary Committee. Vote 6-1. Ought to pass with amendment, Senator Pignatelli for the committee.

1999-0622s

01/03

**Amendment to SB 189-FN**

Amend RSA 354-B:2, I as inserted by section 1 of the bill by replacing it with the following:

I. Whenever the attorney general has reasonable belief that any person has violated any provision of this chapter, the attorney general may bring a civil action for injunctive or other appropriate equitable relief.

SENATOR PIGNATELLI: I rise in support of SB 189 and urge its passage. It is a core of responsibility of government to protect the rights of its citizens. This proposed legislation broadens New Hampshire's ability to respond quickly and efficiently to civil rights violations. It complements existing laws such as the criminal threatening and sentence enhancement statutes and the Human Rights Commission statute by providing law enforcement with an additional tool to address and prevent acts of violence and threaten violence that are motivated by hatred or animosity towards certain personal characteristics of the victim. The result for New Hampshire is a comprehensive, flexible statutory plan to protect all citizens' civil rights. Acts of violence, which are aimed at citizens because they are members of a certain race or religion or other groups, are destructive to the victims and the entire community. When government does not condemn such conduct and intervene quickly and effectively, the community loses faith in the system. The individuals who are personally victimized because of who or what they are, suffer a sense of personal invasion like all victims of threats and violence, but the fear of revictimization and the sense of vulnerability is increased when victims know they are singled out because of personal characteristics that they cannot change. This proposed legislation is a logical extension of current statutes, which seek to address discrimination and illegal acts motivated by bias or hatred. The current law includes both civil and criminal components. The Human Rights Commission statute seeks to address and prevent discrimination and provide civil remedies, but is limited because it can only be used to address discrimination in housing, accommodation and employment. That statute cannot reach conduct that takes place on the streets or in the schools. Nor can it reach acts of violence or threats of violence committed by teens. Recent federal statistics show that a large percentage of civil rights violations and biased motivated acts are committed by teens and young adults. I urge passage of this bill. Thank you very much.

SENATOR FRANCOEUR: Senator Pignatelli, currently, if somebody threatens fiscal force, violence against another person, are they covered by current statutes that we have in law today?

SENATOR PIGNATELLI: I am not positive.

SENATOR FRANCOEUR: If I read this statute further, it talks about minors, applicability to minors on page two, line ten. It says, "notwithstanding any other provision of law and action may be brought in superior court against a minor under this chapter." If a minor is 14 years of age and commits this offense and there is an award of up to \$10,000, who would be responsible for paying that?

SENATOR PIGNATELLI: I am not sure whether there would be an award, but this gives the attorney general the authority to go into superior court and seek injunctive relief, so there might not be any kind of award, it might be injunctive relief. The superior court may say, "you cannot go near this particular person, you cannot go near this particular building because you have threatened or you have actually performed an act of violence."

SENATOR FRANCOEUR: If I read this correctly on page one, line 23, remedies, which it talks about violations of this chapter, line 25, says that a civil penalty of not more than \$10,000 for each violation. I would assume that would be imposed on it. Would that not be a fine, and who would be responsible for it?

SENATOR PIGNATELLI: Well, I imagine that if that is the penalty that is determined by the court because of the severity of the act, I would imagine that the person or the person's parents would be responsible.

SENATOR FRANCOEUR: Thank you.

SENATOR GORDON: Mr. President, are we going to send this to the Finance Committee?

SENATOR BLAISDELL (In the Chair): Yes we are.

SENATOR GORDON: I would like to make a couple of comments regarding this bill and the questions that were asked about the bill. I think that the bill is very well intentioned and I think that in terms of what it is intended to accomplish it needs to be addressed somewhat **TAPE IN-AUDIBLE**. I do have a concern and I am sorry that I wasn't able to be there for the executive session on this bill. It was probably discussed there and that is my fault, but I think that this is a slippery slope and what is actually happening to this bill is that the state is coming back and saying we have criminal laws that basically deal with these kinds of crimes that relate to what this intends to accomplish. But the fact is, that we find it very difficult to afford the criminal laws, so therefore, what we want to do is, we want to create a civil act, and in creating that civil action and be able to go to court and enjoin people engaged in **TAPE INAUDIBLE** anticipating that the fact that they may continue to engage in that conduct or behavior. The problem or the concerns that I have in regard to that is that it creates a different standard, because if somebody has done something wrong under the current criminal laws, you have to prove that beyond a reasonable doubt. By creating this new cause of action, basically what we are doing is we are reducing the standard so that you no longer have to prove that somebody has done something wrong beyond a reasonable doubt, you simply have to prove it by a preponderance of the evidence. I think that legitimately is a concern and whether or not we should be doing that because that is a slippery slope. If it gets to a point where we don't like the fact that people are prevailing drugs, do we then decide that we turn around and create a civil action that says we are going to on a civil basis, enjoin you from doing that in advance? I think that is a real concern and a concern of mine. The other concern that I have with this bill is that it really doesn't create a standard by which the judge will decide when to do this. Basically, the judge would make up their minds that in fact a person has engaged in such conduct as an injunction would be warranted, but as I read it, I don't know that there is a specific standard that says that some person has to legitimately feel that they have been threatened. I don't know that at some point in time that we want to do that. I am more than happy to pass this out as a matter of policy, because I think that we need to deal with the issue, but I am hoping that by the time that it comes back from Finance, that we can have dealt with some of those issues.

SENATOR SQUIRES: I rise in support of the bill. **TAPE INAUDIBLE** at the hearing was compelling. The bill to some extent is modeled after a statute in Maine. It does not need to address the issue of physical threatening. An example, a homeowner, a property owner for whatever reason, lights a cross on their land, and it may be that there is some person for whom that is enormously offensive and I would be one of them. Has he committed a crime? No. Has he done something wrong? Yes. The idea here is to go quickly and to say to that individual, you can't do that. This is not an issue of freedom of speech. It has nothing



to do with freedom of speech. This is an issue of intimidating somebody for the color of their skin, for their religion. A physician that Senator Pignatelli and I know in Nashua came out from the hospital one day and found an anti-Semitic slur written on our car. Criminal? I don't know, criminal mischief, but was it frightening to her? Absolutely. We heard testimony from the attorney general about the harassment of a young man in Laconia who was developmentally disabled. His life was miserable and the state could do nothing about that. I think that this is not a precedent of anything. There is ample precedent for civil suits and criminal actions combined that is going on everyday. So I think that the bill should pass. Obviously it has got to go to Finance. **TAPE CHANGE** superior to what I can do. One would have seen an entirely different light on this bill. So if nothing else read the testimony at the hearing and it will make you a believer.

SENATOR BROWN: I was the one vote who was present for the testimony and voted against this bill. I sympathize with the intentions, but I have some real concerns about going to this length with this particular language in this bill. If you look at page one, line eighteen where it talks about the attorney general as reasonable belief or that the person has violated or is about to violate the provision. I had questions about how you know someone is "about" to do something? We heard the testimony of the doctor who had this anti-Semitic scratch on her car which I agree is a very terrible thing, but the person has not been found. The bill really did not address her concern, I felt, or help her in this issue. My biggest concern was the attorney general's office from Maine said that 40 percent of their cases involve school children. We got into a discussion about bullies. I don't like bullies any better than anyone else, but I have a fear that this may be going a little too far with the attorney general getting involved into our schools. Finally, I want to mention the cost of this. The attorney general's office said that there would be no cost, that these would be volunteers from his office who would prosecute these cases and yet on line 29 one of the remedies is, "attorney fees and costs of the attorney general." So I had a number of concerns, and I just want to say that not everybody who was present signed onto this. Thank you.

SENATOR PIGNATELLI: Senator Brown, you mentioned line 17 and 18 the words "or is about to violate." Were you aware that those words were removed in the amendment?

SENATOR BROWN: No, I wasn't. Thank you.

SENATOR F. KING: Senator Pignatelli, I wonder if we could... maybe it would be appropriate given what is going on in the legislature, if we could add in there that one of the things that we could bring this action forth for is questioning our votes on the legislation.

SENATOR PIGNATELLI: Our votes?

SENATOR F. KING: Questioning our votes of the legislature based on the kind of phone calls that I have been getting.

SENATOR PIGNATELLI: Is that an April Fool's joke?

SENATOR F. KING: No. I was just pointing that out that I thought that perhaps we ought to cover that too.

SENATOR PIGNATELLI: Not in this bill. Thank you.

SENATOR TROMBLY: I think perhaps the inquiry of Senator King while maybe made tongue and cheek, will give some of you some idea what it

is like to experience at a very minimal, almost significant level, the fear that some of the citizens in this state have when they leave their homes or gather with their friends or go to their place of worship. This bill should be passed in its present form now. It should go to Finance and it should be reported out of there unanimously as ought to pass with not one T, I, or period or one colon changed. I do not subscribe to the philosophy that the time to punish this type of behavior is after someone is victimized and suffers a harm. I think that the attorney general should be given the tools to stop this type of behavior before it happens. I do not subscribe to the theory that this legislation is feel good or gives too much power to an already overburdened law enforcement division of this state. This bill is so important to the attorney general's office that the attorney general testified that he has members of his staff who will prosecute this type of behavior voluntarily without pay, without compensation. That is how important it is to them. I don't think that people should be afraid to live in their community. I don't think that people should be harassed. I don't think that they should be intimidated. I don't think that we should be afraid to pass this piece of legislation. It is no accident that teenagers have been led to believe that they can harass and intimidate other members of society. Where do we get off tolerating that? Where is our justification for that, because we may be paring over a slippery slope? We are not going over a slippery slope, we are sliding down it. This is a branch where we can grab onto, to stop that type of behavior. Stop it now. We can't wait three days, we can't wait three weeks, and we can't wait three minutes. I am surprised that we have waited as long as we have. We need to pass this legislation now. We need to give the tools to law enforcement to stop this behavior and \$10,000 isn't enough, and I don't care who pays it because I don't think that the people that are subject to this legislation should have to pay the price that they have to pay to live as residents of the state of New Hampshire. I think that we need to pass it and do it now. Thank you, Mr. President.

SENATOR GORDON: Senator Trombly, I appreciate your words, Senator Trombly.

SENATOR TROMBLY: Do you want to hear more?

SENATOR GORDON: If you feel that it is necessary.

SENATOR TROMBLY: If it will change your mind.

SENATOR GORDON: I am not sure that it changes my mind, but I thought in committee that we had discussed where complaints for juveniles would be filed, and that perhaps it would be better to file those complaints in the district court, which normally deals with juvenile issues as opposed to the superior court. Again, I apologize, because for whatever reason, I wasn't available for the executive session on this particular bill, but I thought that you and I were on agreement that that would be a preferred alternative. I was just wondering if you would have any objection if rather than recommit the bill, because I know that isn't something that you would want to do, if we tabled the bill today and I would bring back an amendment that perhaps changed that and would you have any objections to that?

SENATOR TROMBLY: Senator Gordon, I don't think that I would want to table the bill today. I think that sometimes bills that are left on the table become leftovers, and this is not a bill that should become a leftover. I do agree with you. I do remember that discussion and I think that it is something that we could look at. I think that we could look at it in

the realm of Finance though, Senator Gordon. You know that the juveniles are dealt with in the district court, and they do have the ability to have quicker hearings. I think that it does make sense to move that forward. But in terms of policy, Senator Gordon, I don't think that there is one piece of policy in this bill that should change.

SENATOR GORDON: Then you do agree that we could possibly amend this in the Finance Committee?

SENATOR TROMBLY: Well, given the fact that you are a brilliant attorney and I am a brilliant attorney and we both agree, and the Senate should be afraid. Yes, I agree.

SENATOR FRANCOEUR: Senator Trombly, just so you understand where I am coming from, I appall all of these acts of violence, but I don't care whether it is race, religion or whatever, I think that it is a human being against another human being and that is the responsibility that we have for one to another. My question and what I questioned on this floor this morning is, do we already currently have statute that if I do something to you based on one human being to another, that is already currently covered in the statute? I asked Senator Pignatelli, and she was unable to answer it. You are an attorney and you deal with this kind of thing, do we currently have statutes for threatening fiscal force of violence or for actual threatened damage or trespass of property currently already on our books today?

SENATOR TROMBLY: I think that the only area where you will find that is domestic violence. If you want to victimize people, which I don't think that you want to do, if you want to say that the people who are victims of the crime and they can call themselves battered and beaten, emotionally and physically in front of a judge and ask for a restraining order, that will happen, but I think that you need this for prospective relief.

SENATOR FRANCOEUR: Thank you.

**Senator F. King moved to recommit.**

**A division vote is requested.**

**Yeas: 8 – Nays: 14**

**Motion failed.**

**Question is on the committee amendment.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Cohen.**

**The following Senators voted Yes: F. King, Gordon, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Squires, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.**

**The following Senators voted No: Johnson, Roberge, Francoeur, Krueger, Brown.**

**Yeas: 18 - Nays: 5**

**Amendment adopted.**

**Referred to the Finance Committee (Rule #24).**

**Senator Fraser in favor of SB 189-FN.**



### SUSPENSION OF THE RULES

Senator McCarley moved that the Rules of the Senate be so far suspended as to allow a committee report not advertised in the Senate Calendar and to further suspend the rule requiring a five day hearing notice.

**Adopted by the necessary 2/3 vote.**

**HB 734**, relative to state guarantees of tax anticipation issued by municipalities; and relative to teacher non-renewals for the 1999-2000 school year. Senator McCarley for the committee. Finance Committee. Ought to pass with amendment.

**1999-0688s**

**04/10**

#### **Amendment to HB 734-FN-LOCAL**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to state guarantees of tax anticipation notes issued by municipalities; relative to teacher non-renewals for the 1999-2000 school year; and relative to the transfer of tax liens for the 1999 calendar year only.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as section 4:

3 Transfer of Tax Liens; Exemption of Voting Requirement for 1999. Notwithstanding the provisions of RSA 80:80, the selectmen or mayor is authorized to transfer tax liens upon real estate in accordance with RSA 80:80, II-a without a vote of the legislative body for the 1999 calendar year only.

**1999-0688s**

#### **AMENDED ANALYSIS**

This bill:

I. Allows municipalities to petition the legislative fiscal committee and the governor and council, based upon a compelling need, for state guarantees on tax anticipation notes.

II. Specifies that the provisions of RSA 189:14-a relative to notice of teacher non-renewals resulting from uncertainty as to the level of state funding for education shall be temporarily suspended.

III. Allows for a transfer of tax liens during the 1999 calendar year only without a vote of the legislative body.

**SENATOR MCCARLEY:** House Bill 734 is a further attempt to address the impending situation that many of our communities are facing relative to a lack of a solution to the Claremont decision. The bill basically has three parts to it. Section one allows municipalities to petition the Fiscal Committee and the governor and council based on a compelling need for a state guarantee on tax anticipation notes. We did this earlier with HB 100, and we would like to extend this into the next couple of months. Section two would allow the requirement to inform teachers of non-renewal to be extended from its current deadline of April 15 until May 15. The amendment that was brought in at the request of the commissioner of revenue administration allows municipalities to borrow against their tax liens without a vote of the legislative body for the calendar year of 1999. Those are the three pieces, and I think that the first piece, we obviously have already discussed and felt that it was a good idea, and I would certainly hope that there would be support for that. The second piece is an attempt to deal with the fact that indeed in state law that we have non-renewal notices that go out to teachers if

they are not going to be rehired. Because we would have no ability to pay them, we have municipalities and school districts that obviously, therefore, are liable if they were to send those renewal notices out. Many school contracts actually have language that is in the contract with the teacher's unions, which frankly this really can't correct unless there is a mutual consent to correct that; however, we also have probably equally as many contracts which simply reference state law. This will allow districts to, if they so choose, delay sending out what we currently call the pink slips. I did as a quick aside, get a call from my superintendent this morning to ask just what the state Senate might be doing on this because their plan had been to mail those notices this afternoon. So certainly, I think, that for those communities that have already sent them, it does allow them to continue discussion and try to sort of allay some of the fears that are out there. The third piece came in actually through one of the banks, the Bank of New Hampshire, I believe, they talked to DRA about the fact that indeed currently there is the ability, if it has been approved through the town warrant situation, that there is an ability for a town to borrow against its tax liens; however, for those communities for which those times have gone by, they have already voted on those, they would not have that flexibility. The feeling was that we are talking maybe a handful of towns. There are not enormous tax liens out there, this does not access a lot of money, but it might provide in those few communities that could choose to do this, for this calendar year, the ability for their selectmen, their mayor, their city manager or whatever by state law, and city and town charters allow them to do this, to go ahead and to borrow against those. So it seemed to be a very reasonable amendment and I would hope that we could all support this at this time. I do want to add that every bit of testimony in Finance said "by the way folks, don't think that this is getting you off of the hook. Don't think that you are doing anything here but helping in a very, very small way." So I felt that I needed to bring that testimony forward, because everybody that spoke for this, supported this, but they supported it only looking us in the eye and saying "fix this", "solve this". Thank you.

**SENATOR HOLLINGWORTH:** Senator McCarley, the pink slip portion of the bill... the one piece that I think that I heard in the testimony and I hope that you heard it as well, that any teachers that were going to be let go for other reasons would continue to get their pink slips?

**SENATOR MCCARLEY:** Thank you, Senator Hollingworth, and that is correct. I should have touched on that. If there is a situation where non-renewal is going out for cost for performance, there is no impact on that whatsoever. That process goes forward as it should and as it always does.

**SENATOR HOLLINGWORTH:** Senator McCarley, all testimony was in support of it, but clearly the major focus from the people that were testifying, the municipalities and the school boards, was that the guarantee was essential and that there were several schools waiting to take advantage of that. Is that not true?

**SENATOR MCCARLEY:** Absolutely. That is certainly true.

**Question is on the committee amendment.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator McCarley.**

**Recess.**

**Out of Recess.**

**The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Roberge, Blaisdell, Fernald, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.**

**The following Senators voted No:**

**Yeas: 24 - Nays: 0**

**Amendment adopted.**

**Ordered to third reading.**

**SB 80**, relative to adding the name of Martin Luther King, Jr. to Civil Rights Day. Public Affairs Committee. Vote 5-2. Ought to Pass, Senator Russman for the committee.

**Senator Trombly moved to have SB 80 made to Special Order for Thursday, April 8, 1999 at 12:01.**

**Adopted.**

**SB 80 is Special Ordered for Thursday, April 8, 1999 at 12:01 p.m.**

**SB 116**, eliminating straight ticket voting. Public Affairs Committee. Vote 5-0. Ought to Pass, Senator Krueger for the committee.

SENATOR KRUEGER: As unusual as it may seem, I am in support of this bill. Senate Bill 116 eliminates straight ticket voting in New Hampshire. Currently only 19 states still provide that a voter can cast all of their votes for every candidate of one party by marking the party block at the top of the ballot. While this has long been protected in New Hampshire races, I stand before you in support of its elimination. Voters are too often confused by this designation, on both sides of the aisle. Frequently a voter marks the Straight Ticket box at the top of the ballot and then proceeds to also mark specific candidates on the ballot. How should the ballot be counted? What was the intent of the voter? Is the entire ballot void? It is unknown as to how many races were called incorrectly because ballots were mismarked due to this confusion. These multi-marked ballots present a problem in re-count elections when a handful of votes, in thousands cast, have the ability to change the outcome. Testimony was received at the hearing that voters have expressed the understanding that the box at the top was to indicate their party affiliation, not that they wished to cast all of their votes to that one party. While the ballot may state what marking this box indicates, from the number of mis-cast or misinterpreted votes, many do not take the time to read the instructions. Eliminating the straight ballot vote would cause voters to take only a few seconds longer to mark their ballots. However, in individually marking each name, this would clearly indicate for whom they had cast their vote while eliminating the confusion and controversy currently surrounding the current practice of straight ballot voting. Representatives at the Senate hearing from both the Secretary of State's office, which by the way, is the reason that I am in support of this, and the Ballot Law Commission, testified in support of this legislation. No one appeared in opposition. The Public Affairs Committee unanimously supports SB 116. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 18**, relative to the rulemaking authority of the state board of education regarding certain educational personnel. Education Committee. Vote 6-0. Ought to pass with amendment, Senator Disnard for the committee.



1999-0599s

04/10

**Amendment to SB 18**

Amend RSA 21-N:9, II (s) as inserted by section 1 of the bill by replacing it with the following:

(s) Certification standards for educational personnel, and educator certification fees for granting credentials to educational personnel, including teachers, paraprofessionals, superintendents, assistant superintendents, special education administrators, business administrators, principals, vocational directors, coordinators of comprehensive health education and services, directors of pupil personnel services, guidance directors, guidance counselors, school psychologists, associate school psychologists, speech-language specialists, social workers, health educators, physical education teachers, ~~home economics teachers~~, **consumer and family science teachers**, elementary teachers, specialists in assessment of intellectual functioning, media supervisors, ~~and~~ media generalists, **and master teachers** as authorized by RSA 186:8 and RSA 186:11, X, ~~and~~ professional credentials including beginning educator credentials, experienced educator credentials, and intern licenses, **and other classifications of educators, administrators, specialists, and paraprofessionals necessary to address educational needs as determined by the state board upon the recommendation of the professional standards board pursuant to RSA 186:60.**

1999-0599s

**AMENDED ANALYSIS**

This bill revises the rulemaking authority of the state board of education to include master teachers, and other educators, administrators, and paraprofessionals necessary to address certain educational needs.

SENATOR DISNARD: This is a straightforward bill. Mr. President, I rise in support of SB 18, which essentially updates statutory language that classifies certain education personnel. Under the RSA section dealing with the rulemaking authority of the State Board of Education, there has been an ever-expanding list of job titles and classifications that the board oversees. Every so often a new job title would have to be added to the statute producing a lengthy and confusing list of job titles and requiring in each case, a change to the statute. The Department of Education asked the legislature to simplify all of this by adding to the current list of job titles some general classifications that would encompass individual job titles. The amendment to SB 18 adds these new general classifications while retaining the current language, since the job titles currently in the statutes are referenced in collective bargaining. Collective bargaining agreements and therefore, must be left in place. I ask for your vote of ought to pass.

**Amendment adopted.**

**Ordered to third reading.**

**SB 77**, relative to authorized regional enrollment area schools. Education Committee. Vote 5-1. Ought to pass with amendment, Senator McCarley for the committee.

1999-0598s

04/10

**Amendment to SB 77**

Amend RSA 195-A:3, V as inserted by section 1 of the bill by replacing it with the following:

V. An area school planning board may recommend that there be established an authorized regional enrollment area plan for elementary or secondary schools, or both, or any other reasonable combination of grades, composed of all the school districts represented by its membership or any specified combination thereof. The planning board shall prepare a written plan for the proposed regional enrollment area, which shall be signed by at least a majority of the membership of such board, which shall set forth the following: (a) the name or names of each area school or schools proposed, and the receiving district in which such schools shall be located; (b) the sending districts or portions thereof which, together with the receiving district, shall form the region which each area school or schools shall serve; (c) the grades for which each area school or schools shall be responsible (which may include a combination of elementary and secondary grades or any other reasonable classification); (d) the formula for calculation of tuition; (e) the manner in which any form of state aid shall be credited, unless otherwise expressly provided by law; (f) the existing school buildings in the several school districts which shall be discontinued; (g) the existing school buildings in the receiving district which shall be designated as an area school or schools including any existing buildings to be initially enlarged; (h) the proposed new area school building or buildings to be initially constructed in the receiving district and the initial location of same; (i) the estimated initial enrollment in each area school from each of the sending districts and from the receiving district; (j) the proposed date or dates of operating responsibility of each planned area school, which date may be subsequently postponed by the state board upon petition of a receiving or sending district, in the event of unforeseen circumstances or for good cause shown; (k) the scheduled date or dates during each year upon which tuition payments shall be made by the sending districts to the receiving districts and whether the tuition shall be payable in installments, or in a lump sum; (l) procedure for improvement or changes in curriculum and other school programs and services; (m) the method, time, and manner in which the plan may be amended, subject to state board approval, where not incompatible with law; (n) *the term of the agreement shall be for a minimum of 10 years unless otherwise provided by mutual agreement of the school districts consistent with the provisions of RSA 195-A:3, IX*; (o) *the manner in which the interests of the school boards of the sending districts will be addressed*; (p) any other matters, not incompatible with law, which the area school planning board may consider appropriate to include in such written plan. Amend RSA 195-A:14, IX as inserted by section 2 of the bill by replacing it with the following:

IX. The vote to withdraw from an AREA agreement shall take effect on July 1 of the calendar year which shall be at least 2 years after the date on which the withdrawal vote is adopted. The plan may provide for an earlier date subject to the mutual agreement of the districts involved.

1999-0598s

**AMENDED ANALYSIS**

This bill provides for certain changes in the current area school law with regard to the length of an area agreement, the withdrawal of a

district from an area agreement, the representation of the sending district on the receiving district's school board, and the manner in which the interests of the school boards of the sending districts will be addressed within the area plan.

**SENATOR MCCARLEY:** Senate Bill 77 simply provides school districts that are involved in area agreements some additional flexibility relative to having the representatives from the sending districts sit on the boards. It does not require anybody to do anything. It simply allows the flexibility that if they want to do that they can. Also, the amendment basically changes the duration of an area agreement to a minimum of ten years rather than the current maximum of ten years. Again, these are both provisions that allow some flexibility within the area agreement and were supported by a number of districts who were involved in these as a way to allow them to do business more efficiently with one another. I would urge your support of ought to pass as amended.

**Amendment adopted.**

**Ordered to third reading.**

**SB 152-L**, relative to the procedures for establishing a charter school. Education Committee. Vote 5-1. Ought to Pass, Senator D'Allesandro for the committee.

**SENATOR D'ALLESANDRO:** Mr. President, SB 152 was developed at the request of the Department of Education to fine tune the application process for charter schools. The current law regarding charter school applications was developed before anyone in the state really knew what the volume of applications would be, or how the application process would work once regulations were in place. Now with some years of experience in the application process, the Department of Education is recommending certain changes which are designed to help both the charter school applicant and the school boards. The changes clarify the application requirements and responsibilities of both parties. Senate Bill 152 also extends the time period for the establishment of a charter school from 18 to 24 months, because the Department of Education has recognized the difficulty of establishing a charter school where an area agreement is in place. It is appropriate that now that the department has had some experience in seeing and evaluating the charter school application process, it is in a position to adjust and improve the procedures. Senate Bill 152 makes these improvements. The Education Committee recommends that this bill ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 170-FN-A**, establishing a parents as teachers pilot program in Sullivan county and making an appropriation therefor. Education Committee. Vote 6-0. Ought to pass with amendment, Senator Disnard for the committee.

**1999-0669s**

**04/09**

#### **Amendment to SB 170-FN-A**

Amend the bill by replacing all after the enacting clause with the following:

1 New Subdivision; Parents as Teachers Program. Amend RSA 193 by inserting after section 33 the following new subdivision:



### Parents as Teachers Program

#### 193:34 Policy and Purposes.

I. This act recognizes the importance of the early childhood years upon children's brain development. Given appropriate stimulation, babies develop critical cognitive and social skills from birth to age 3. These early years provide a window of opportunity to enrich a child's cognitive and social development. The least intrusive and most successful way to impact early childhood experiences is to educate parents as to how they can best teach their children. Studies have shown that parents who are trained as to how to interact with their children can help their children enter school ready to learn and are more likely to stay involved with their child's educational process throughout the school years of the child. Without such training, parents may not develop the skills necessary to help stimulate for their children and a critical opportunity for parent involvement may be lost.

II. An established program, known as "parents as teachers," creates a partnership between parents and early childhood development professionals. Early childhood development professionals conduct regular home visits and group meetings to help parents understand what to expect from their children in each stage of development and to teach parents how to encourage learning, manage challenging behavior and promote stronger parent-child relationships. The "Parents as Teachers Program" has existed in the United States since 1981, and now has a presence in 49 states across the United States, including some sites in New Hampshire administered by the Parent Information Center, as well a presence in 6 foreign countries.

III. The purpose of this act is to expand the "parents as teachers" program in New Hampshire by developing a school district based site in Sullivan county to operate for 4 years. The program may also be made available in urban areas. Sullivan county has been chosen because of its unique demographic profile, including: the high number of risk factors affecting its children and the children and the existence of a good referral source for the parents as teachers program through the "Good Beginnings" program at the county's major hospital, the Valley Region Hospital. This act will create an oversight committee to monitor the implementation of the school district based site program during the 4 year period and to make recommendations concerning the replication of the parents as teachers program in other school districts in New Hampshire.

#### 193:35 Parents as Teachers Program Established.

I. There is hereby established a parents as teachers program in Sullivan county to be administered statewide by the Parent Information Center, in cooperation with local school administrative unit 6 and the department of education. The program shall be made available to parents of children born and residing in Sullivan county during the effective period of the program. The program shall offer specific components recommended by the Parents as Teachers Program National Center which may include home visits to each family by a certified parent educator, group meetings for participating families, child development screenings, and a resource network to help families access other early childhood development programs in the county.

II. School administrative unit 6, in cooperation with the Parent Information Center, shall develop specific guidelines and procedures for implementing the parents as teachers program.

III. The parents as teachers program shall allow for the participation of 180 families over the 4-year period in accordance with a sched-

ule to be determined by the parents as teachers oversight committee established in RSA 193:36. The commissioner of the department of education shall ensure that funds appropriated for the purposes of the parents as teachers program are distributed for the purposes established in this subdivision.

193:36 Parents as Teachers Oversight Committee Established; Membership; Duties.

I. There is hereby established a parents as teachers oversight committee to assess the effectiveness of the parents as teachers program in Sullivan county and to make recommendations concerning the replication of the program in other school districts in the state.

II. The committee shall be comprised of 14 members as follows:

(a) One member of the senate, appointed by the president of the senate.

(b) One member of the house of representatives, appointed by the speaker of the house of representatives.

(c) One member appointed by the governor.

(d) The commissioner of education, or designee.

(e) The commissioner of health and human services, or designee.

(f) One member from the Parent Information Center, appointed by said organization.

(g) One member from school administrative unit 6, appointed by the superintendent of that organization.

(h) One member from school administrative unit 43, appointed by the superintendent of that organization.

(i) Two members who are parents participating in the program, appointed by the superintendents of school administrative units 6 and 43.

(j) One member from the Children's Alliance of New Hampshire, appointed by said organization.

(k) One member from New Hampshire Head Start, appointed by the Head Start Directors Association.

(l) One member from the university of New Hampshire, appointed by the president of said organization.

(m) One member from the business community, appointed by the superintendents of school administrative units 6 and 43.

III. Legislative members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

IV. The committee shall perform the following duties:

(a) Examine the effectiveness of a school based site for the parents as teachers program.

(b) Identify early childhood care and education collaboration partners.

(c) Involve parental input in the evaluation of the school based program.

(d) Recommend whether appropriations should be sought to replicate the parents as teachers programs in other school districts in New Hampshire, including a recommendation, during the second year of operation of the program, as to whether appropriations should be sought to begin a second school district based site in another county in New Hampshire. For purposes of choosing a second school district based site, preference shall be given to a county with an urban population so that the demographics of New Hampshire are reflected.

V. The members of the oversight committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the senate member of the committee. The first meeting shall be held within 45 days of the effective date of this section. Six members of the committee shall constitute a quorum.

VI. The committee shall issue an initial report on its findings and any recommendations for any proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2000. A final report of findings and recommendations shall issue within 90 days of the end of the final fiscal year for which funding for the parents as teachers program in Sullivan county is appropriated.

VII. The department of education shall provide administrative support to the committee as may be necessary to implement the parents as teachers program.

2 Appropriation. There is hereby appropriated the sum of \$54,000 for the fiscal year ending June 30, 2000, \$66,000 for the fiscal year ending June 30, 2001, \$79,000 for the fiscal year ending June 30, 2002, and \$84,000 for the fiscal year ending June 30, 2003, to the department of education to implement and administer the provisions of this act. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

3 Prospective Repeal. Section 1 of this act, relative to the Parents as Teacher Program is repealed.

4 Effective Date.

I. Section 3 of this act shall take effect July 1, 2003.

II. The remainder of this act shall take effect 60 days after its passage.

SENATOR DISNARD: I refer to the prime sponsor, Senator Wheeler.

SENATOR WHEELER: Senate Bill 170 is an excellent bill which received overwhelming support from educators, early childhood specialists and members of the public. It establishes a parent as teachers pilot program in Sullivan County and recommends that a second program be established in one of New Hampshire's urban areas. The Parents as Teachers Program serves children from birth through age three and their parents. The first three years of a child's life have been proven to be of critical importance in the child's cognitive and social development. One of the things that I learned at the hearing that absolutely astonished me is that by age three, a child can have a passive vocabulary of 1000 words, which will be one third of all of the words that we ever know. So that is pretty impressive that all of that can happen by age three. This program will significantly help parents to develop the skills to nurture their young child's ability to learn. Children who receive this type of extra help have shown to be more ready to learn once they get to school. The modest cost of this program is about \$80,000 a year is a smart investment for the state to make. There is no better way to prepare our young children to learn and to succeed in school. This bill has my unqualified support and the unanimous recommendation of the Education Committee. Thank you.

**Amendment adopted.**

**Referred to the Finance Committee (Rule #24).**

**SB 204**, establishing the New Hampshire excellence in higher education endowment trust fund. Education Committee. Vote 6-0. Ought to Pass, Senator Larsen for the committee.

SENATOR LARSEN: Mr. President and members of the Senate, it is my honor today to present SB 204 to the full Senate. Last session the legislature created the unique college tuition savings plan, a first in the nation public, private partnership offering families in New Hampshire and



nationwide a tax deferred way to invest money for their children's education. Managed by fidelity, and overseen by the New Hampshire College Tuition Savings Advisory Commission of which Senator Gordon and I serve on, unique savings plan currently has over \$50 million in assets set aside and growing. That is in less than one year, which will be available when its student beneficiaries are ready for college. The unique plan in less than one year has proven to be a highly successful program that will greatly benefit New Hampshire's families and students. Senate Bill 204 creates a higher education endowment trust fund out of the administrative fees from this unique college investing plan. The trust fund will be used to provide scholarships based on merit and need for New Hampshire students attending any eligible post secondary institution within New Hampshire. Although the trust fund will start out small, we believe that it will grow to a level where we can provide significant scholarship benefits to New Hampshire students seeking higher education at a variety of institutions, including traditional colleges and vocational programs. While the unique plan extends to New Hampshire students attending schools either in or out of New Hampshire, this endowment fund that we are creating in SB 204 is targeted at education programs within the state, and this way the endowment program will assist not only New Hampshire students, but also the institutions here in the state that offer post secondary programs. Senate Bill 204 is a highly creative and effective way to assist New Hampshire's young people in obtaining skills and knowledge that will help them be successful. The fund operates at no cost to the state, and yet will, over time, provide significant scholarship benefits to the students of this state. This bill has the unanimous support of the Education Committee, and I urge you that you vote this ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 207-FN**, relative to authorizing bonds for the construction and renovation of regional vocational education centers. Education Committee. Vote 7-0. Ought to pass with amendment, Senator Larsen for the committee.

**1999-0672s**

**04/01**

### **Amendment to SB 207**

Amend the bill by replacing section 1 with the following:

1 Regional Vocational Education Centers; Bonding Authority Amended. RSA 188-E:10 is repealed and reenacted to read as follows:

188-E:10 Renovation and Construction of Regional Vocational Education Centers; Bonds Authorized. To provide funds for the renovation and construction of regional vocational education centers, the state treasurer, as may be requested by the department of education, is authorized to borrow upon the credit of the state such amounts so that the total state obligation shall at no time exceed \$85,000,000 and for said purposes may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6-A. The department of education shall request and the treasurer shall issue bonds only for such amounts as are required for the purposes of this section, provided, however, the department shall request and the treasurer shall issue no more than \$10,000,000 per biennium.

1999-0672s

## AMENDED ANALYSIS

This bill authorizes the state treasurer, as requested by the department of education to issue bonds in such amounts not to exceed \$85,000,000 for the purpose of construction and renovation of regional vocational education centers, provided that no more than \$10,000,000 in such bonds shall be issued per biennium.

SENATOR LARSEN: Mr. President, I thank you for this opportunity to stand up once again for a wonderful bill. Senate Bill 207 provides that our regional vocational centers located at high school around the state, that play an important role in preparing New Hampshire students for the challenges of the job market. In today's economy, there are many jobs that require technical skills and hands-on experience. Our high school based vocational centers are there to give kids the opportunity to learn vocational and technical skills. We all recognize the need for modern equipment that meets industry standards, however, many of our schools which were constructed as much as 20 years ago are in desperate need of modernization. Obsolete equipment and facilities at the high schools are not useful in preparing students to work successfully in jobs that are often, even at entry level, highly technical. It is not enough for a student of an automotive mechanics to work on old cars, today he or she must use the state of the art equipment and computers to learn auto mechanics. The same applies to many fields, telecommunications, robotics, biotechnology, electronics and graphics. There should be a good source of jobs for our students, especially kids who do not go into the more traditional liberal arts institutions. With the cost of traditional programs increasing and the state aid falling short, vocational education is a crucial component of our student's ability to earn a living and enjoy a high quality of life. Senate Bill 207 extends bonding authority that the legislature created last session for the renovations and construction of regional vocational education centers. Currently, we know of eight regional schools that are seeking or will be seeking assistance to renovate their regional vocational centers at their high schools. Those schools include, and these are regional, Nashua, Keene, Berlin, Conway, Concord, Kingswood, Wolfeboro, Plymouth and ultimately, Jaffery-Rindge, seeks to do new construction. The amendment in SB 207 places a \$10 million cap on outstanding bonds in a biennium so that the state's exposure will not exceed \$10 million at any one time. This will enable schools to offer vocational programs in classes that will help high school students prepare for the challenging jobs of today's economy. I urge you to join the Education Committee in voting this bill ought to pass as amended.

SENATOR PIGNATELLI: This bill is especially important to me as a Senator from Nashua, and I am very happy to have lent my name as a co-sponsor to this bill. We had one of the first regional vocational educational centers in the state and we are very proud of it; however, even at the time that it was built, the computers and other equipment at the center was outdated. For example, we were using computers that were donated to us by companies who could no longer use those computers because they were obsolete. Nashua has about a 25 percent high school drop out rate. We have a real need to address the needs of students who aren't successful in the academic fields or aren't as academically motivated as some of our other students. Manufacturing and industry are among the largest and fastest growing job markets in New Hampshire, especially in the southern part of the state. The jobs are out there, but

unless we can turn out the students who have the appropriate skills, we will miss out on the job opportunities afforded by companies that have chosen to locate in this state. At the hearing yesterday, a representative from Lockheed Sanders, testified that the needs of Nashua's vocational education center are desperate. While companies like Lockheed Sanders are willing to help out, and have been doing so for many years, the state needs to take a role in improving these facilities in the high schools where they exist and establishing these vocational centers in schools where they do not now exist. The bonding authority extended in SB 207 will help meet that need, and I urge, along with Senator Larsen, your support of this bill. Thank you.

**Amendment adopted.**

**Referred to the Finance Committee (Rule #24).**

SENATOR MCCARLEY (Rule #44): I just want to say very quickly, that we have put a lot of pressure on people around here the last few days to get things into this calendar today, and I want to thank the members of Senate Education and particularly, Rosalie, for managing to collect the disastrous paperwork at the end of the committee yesterday and get it where it had to be to make it into the calendar. Sometimes I think that we have all been so pressured that we forget how much work we are asking people to do. I just wanted to personally say thank you to her. Thank you.

**HB 249**, relative to the membership of the rivers management advisory committee. Environment Committee. Vote 6-0. Ought to pass with amendment, Senator Cohen for the committee.

**1999-0470s**

**03/01**

### **Amendment to HB 249**

Amend RSA 483:8, I(j) as inserted by section 1 of the bill by replacing it with the following:

(j) A representative of the agricultural community chosen from a list of 3 nominees submitted by the New Hampshire Farm Bureau Federation, the Northeast Organic Farming Association, and the New Hampshire Association of Conservation Districts.

**1999-0470s**

### **AMENDED ANALYSIS**

This bill adds a member to the rivers management advisory committee to be nominated by the New Hampshire Farm Bureau Federation, the Northeast Organic Farming Association, and the New Hampshire Association of Conservation Districts.

SENATOR COHEN: This legislation acknowledges the need for a representative from the agricultural community and have them be a voting member of the Rivers Management Advisory Committee, which is responsible for advising the Department of Environmental Services on implementation for the purposes of the Rivers Management and Protection Act. It is evident that farm management impacts watersheds and rivers and, in turn, Rivers Management impacts agricultural practices; therefore, the agricultural community should have a voice in policymaking for the management and protection of our rivers. The amendment adds the New Hampshire Organic Farmers Association and the New Hampshire Association of Conservation dis-



tricts to a list of organizations providing nominees for the new voting agricultural seat on the committee. The addition of these two groups will likely enhance the current level of coordination and cooperation among the New Hampshire Farm Bureau Federation and these groups. The committee feels that an additional representative from the agricultural community will benefit the Rivers Advisory Management Advisory Council and I urge you to support HB 249 as amended.

**Amendment adopted.**

**Ordered to third reading.**

**SB 178-FN-A**, appropriating funds for mitigation relative to the dredging of Little Harbor. Environment Committee. Vote 7-0. Ought to pass with amendment, Senator Cohen for the committee.

**1999-0538s**

**03/01**

### **Amendment to SB 178-FN-A**

Amend the title of the bill by replacing it with the following:

AN ACT relative to appropriations to the port authority for dredging projects.

Amend the bill by replacing section 1 with the following:

1 1991 Appropriation; Port Authority; Dredging Projects Added. Amend 1991, 351:5, as amended by 1992, 260:20 and 1994, 204:1 to read as follows:

351:5 Appropriation; Port Authority. The expansion of the Port of Portsmouth funded in this section shall include an 11-acre expansion of the north yard of the port, [and] the construction of a 750-foot pier, **and dredging projects including associated mitigation to maintain channels and harbors**. The sums hereinafter detailed are hereby appropriated for the project specified:

A. Port of Portsmouth Expansion	\$18,300,000
Total state appropriation section 5	\$18,300,000

(The funds appropriated in subparagraph A for the Port of Portsmouth expansion shall not be expended, encumbered, or obligated in any way unless an action plan, which shall include construction documents, prepared by the New Hampshire Port Authority shall be approved by the capital budget overview committee, the fiscal committee, and the governor and council. \$1,500,000 of the total amount appropriated herein is hereby released for the purpose of final design and bid documents. \$1,800,000 of the total amount appropriated is designated for wetland mitigation. The remaining \$15,000,000 is designated for construction **and dredging projects including associated mitigation**. This appropriation shall be nonlapsing until the project is completed. **The New Hampshire Port Authority shall not encumber, obligate, or expend any funds from this appropriation for dredging projects without the prior approval of the capital budget overview committee. The total amount that may be expended for dredging projects including associated mitigation shall not exceed a total of \$1,000,000.**)

**1999-0538s**

### **AMENDED ANALYSIS**

This bill makes certain money appropriated to the New Hampshire port authority available for dredging projects including associated mitigation.

SENATOR COHEN: I rise in strong support of SB 178. The federal anchorage area of Little Harbor has partially filled with sediments since it was created in 1903. Many recreational fishing and commercial boat operators have expressed concern over the shallowness and the increasing shallowness of some of the anchorage, and wish to see it deeper. There are 210 moorings within the anchorage, which is within the federal domain and as such, the U.S. Army Corps of Engineers is responsible for its maintenance. They have agreed that they will pay for the dredging operation, but not including the mitigation. The dredging operation is estimated between \$600,000 and a million dollars, and it disturbs an area of about 6-1/2 acres of eelgrass within the total 40-acre anchorage. The Corps has secured funding for the dredging, but has no plans to cover mitigation. The Council on Resources and Development stated that state funding of this mitigation may well be the most expedient method of ensuring that the needed dredging is completed in a timely manner. It has already taken a long time. The EPA and the National Marine Fisheries Service are both on record as requiring mitigation, and they have proposed that the mitigation be in the form of transplanting the eelgrass in the area which is to be dredged. The cost of the transplanting is estimated to be around \$150,000. Transplanting is a labor-intensive exercise, and it has a high probability of success. As a prime sponsor of this bill, I offered an amendment allowing that the appropriation for this mitigation be drawn from funds already designated for the expansion of the Port of New Hampshire, and allowing this appropriation shall be nonlapsing until the project is completed. This maximum may not be expended pending other potential federal action, but this enables the Port Authority to get it done. I urge you to pass SB 178 as amended and allow the much needed dredging of Little Harbor to proceed. Thank you.

**Amendment adopted.**

**Referred to the Finance Committee (Rule #24).**

**SB 195-FN-A**, appropriating funds for sludge testing. Environment Committee. Vote 6-0. Ought to pass with amendment, Senator Russman for the committee.

**1999-0466s**

**08/01**

#### **Amendment to SB 195-FN-A**

Amend the bill by replacing section 1 with the following:

1 Transfer of Appropriation. The amount of \$500,000, appropriated for state aid grants by 1997, 350:1 PAU 03, 04, 02, 01, 04 for fiscal year 1999, shall be transferred as income to the sampling and analysis of sludge or biosolids samples fund under RSA 485-A:4, XVI-c.

**1999-0466s**

#### **AMENDED ANALYSIS**

This bill transfers \$500,000 appropriated for state aid grants to the sampling and analysis of sludge or biosolids samples fund.

This bill is a request of the department of environmental services.

SENATOR RUSSMAN: Senate Bill 195-FN basically expands the testing of sludge so that all of the municipalities that are spreading it would have the opportunity to have some testing done. It would also expand the UNH data base in terms of heavy metals and things that we are concerned about in sludge, and expand that and allow the university to help interpret what that means for New Hampshire. We urge passage of the bill.

SENATOR FRANCOEUR: Senator Russman, it is talking about transferring \$500,000 in excess funds. Where is the \$500,000, and why is it excess?

SENATOR RUSSMAN: At this point, I cannot tell you why it was excess, but it was one of the programs relative to, I believe sludge. It couldn't be used under the law as it was written, so this is leftover. The problem is that a lot of the towns that are using it...it is almost like a 28-a thing, they are not in a position to test it, so this money would pay for any town that is essentially using it to allow the testing to go forward.

**Amendment adopted.**

**Referred to the Finance Committee (Rule #24).**

**SB 212-FN**, requiring the insurance department to develop a plan to address the needs of persons with chronic illnesses and disabilities. Insurance Committee. Vote 5-0. Ought to Pass, Senator Squires for the committee.

SENATOR SQUIRES: This bill, this committee, at long last recognizes and explores a fundamental problem in health insurance, which to be brief is this, health insurance rests on the following principles that people begin in a state of health, and they are afflicted with some problem, which is then addressed by more or less agreed upon means, and they recover their health. Furthermore, **TAPE CHANGE** for about 80 or 85 percent of the population. It does not work for three groups of individuals. People with developmental disabilities, people with mental illness and people with chronic illness. Once you have diabetes, you don't insure anybody anymore for insulin. They simply need it, or hypertension or heart disease and all of the other chronic afflictions. If you have cerebral palsy, you are born that way, you need physical therapy forever, not by some preset limit, which is applicable to recover from say, knee surgery. So this bill begins the process of looking at that and finding out how we are going to meet the health care cost of those three groups of people. I think that it is a major step, and it will bring out into the open, many of the problems that afflict the health insurance industry today. I hope that you will pass it, and I hope that everybody will join up to be on this study committee. Just to make sure that there is no misconception, I volunteer my services. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #24).**

**SB 146**, granting district courts exclusive jurisdiction over actions involving real estate purchase deposits held in escrow accounts. Judiciary Committee. Vote 5-0. Ought to pass with amendment, Senator Fernald for the committee.

**1999-0657s**

**05/10**

### **Amendment to SB 146**

Amend the title of the bill by replacing it with the following:

**AN ACT** granting district courts exclusive jurisdiction over actions involving certain real estate purchase deposits held in escrow accounts.

Amend the bill by replacing section 2 with the following:

2 New Paragraph; Actions Involving Real Estate Purchase Deposits of \$5,000 or Less Held in Escrow. Amend RSA 502-A:14 by inserting after paragraph III the following new paragraph:



IV. In actions involving ownership of money deposited in escrow accounts pursuant to RSA 356-A:9-a, district and superior courts shall have concurrent jurisdiction, except that in actions originally filed in district court where the amount in controversy is \$5,000 or less, the district court shall have exclusive jurisdiction.

1999-0657s

#### AMENDED ANALYSIS

This bill grants district courts exclusive jurisdiction over actions filed there involving certain real estate purchase deposits held in escrow accounts.

SENATOR FERNALD: In New Hampshire we have two different levels of trial court. We have the superior court and the district court, and generally speaking, the superior courts are for big cases and the district courts for smaller cases. District courts cannot hear cases over \$25,000; however, there is no minimum threshold for superior court, which means that sometimes little cases get into the big court. This bill addresses that in one particular situation which comes up from time to time, which are deposits that are paid on purchase and sale agreements are in escrow and the deal falls apart and the escrow money becomes an issue; and the real estate broker gets dragged into court because they are the ones who are holding the money, while the buyers and seller are fighting. What this does is, it says that if the amount of money that is in dispute is less than \$5,000, it has to go to district court, to the little court, if you will. The committee has voted in favor of this with the amendment. We ask for your support.

SENATOR FRANCOEUR: Senator Fernald is RSA 356-A; 9-a is that for \$5,000 or is that just the real estate statute?

SENATOR FERNALD: I cannot tell you off of the top of my head what 356-a is, but judging from the context here, I believe that it is a statute that has to do with escrow accounts.

SENATOR FRANCOEUR: I ask this question because a lot of times in real estate, Senator Fernald, there are deposits on real estate that are well over \$5,000, and I want to make sure that this is that, because I think that I briefly spoke to Senator Gordon this morning about 356-A:9 and it was a condominium law. I just would feel more comfortable if we were talking about the \$5,000 being the limit that would be in the district court and not some amount could be \$50,000 or \$100,000 that should be in the superior court. I was wondering if you had checked that and if we could have a few minutes to maybe check the statute to make sure that we are in the right section?

**Recess.**

**Out of Recess.**

**Amendment adopted.**

**Ordered to third reading.**

**SB 22**, relative to the pilot program relative to the administration of medication in residential care facilities. Public Institutions, Health and Human Services Committee. Vote 3-1. Ought to pass with amendment, Senator Wheeler for the committee.

1999-0650s

01/09

**Amendment to SB 22**

Amend the bill by replacing section 3 with the following:

3 Resident Assessments. Amend 1998, 269:2, I(c)(4)(E) to read as follows:

(E) The resident shall be assessed utilizing the state's needs assessment no more than 30 days prior to request. A full resident needs assessment shall be done quarterly, *or immediately if the physical condition or the medication of the resident has changed*, and sent to the bureau of health facilities within 7 days of completion.

1999-0650s

**AMENDED ANALYSIS**

This bill includes supported residential care facilities in the pilot program established in 1998, 269. The bill also clarifies the assessment of residents.

SENATOR WHEELER: Mr. President, I rise in support of SB 22 regarding a program for the administration and medication in residential care facilities. Two years ago the House and the Senate created a study committee on the subject of medication administration in residential care facilities which resulted in a piece of legislation, HB 1652, which passed both the House and the Senate last year. It established a pilot program in residential care facilities to allow authorized personnel to administer medications. It was based on the developmentally disabled medication program model. To date, no facility is utilizing the program because the current program is limited to residential care facilities only. The changes proposed in this bill would allow supported residential facilities to participate in the pilot program, and would reduce the minimum time. An administrator must be employed at a facility from two years to six months. In addition, an amendment was offered which requires a full resident needs assessment to be done quarterly or immediately if the physical condition or the medication of the resident has changed. I urge you to think of the benefits that this pilot program could offer to the residents in supported residential care facilities by allowing them to stay where they are for as long as possible. I urge you to pass SB 22 as amended. Thank you.

SENATOR KRUEGER: I rise in opposition to this particular bill. Obviously I support the concept of keeping people supported in their residential placements; however, I have great concerns because I feel that this bill does not recognize the fact that if people who are brought into these facilities as aides and given a very short training, have no demands on them, that they have been working there for any designated amount of time; therefore, I think that this leads to transiting people who may in fact, one would hope not, but who may in fact, when you combine elderly you combine medication, and you combine people who are not associated with the facility for very long, I have concerns. The second concern that I have which was brought out in testimony, would be that insurance cost might in fact rise. I appreciate the intent of the bill, and I know that most people, quite honestly, who were there certainly looking at the numbers coming out of committee would not agree with what I said, but I felt compelled to bring that at least to the floor. Thank you, Mr. President.

SENATOR WHEELER: I just wanted to respond to Senator Krueger's legitimate concerns, but these are concerns that were brought up last year when we debated the policy of the legislation. This bill does not

change the policy, which was indeed adopted by both the House and the Senate. I also realize that Senator Krueger was not on the study committee in Health and Human Services, which dealt with this, and that the policy has been scrutinized quite carefully. It is supported by the Nursing Board and by all parties involved. This piece of legislation does not change the policy already adopted by the legislature, it just allows supported residential care programs to enter into the pilot program. Thank you.

**Amendment adopted.**

**Ordered to third reading.**

**SB 28**, relative to food production and distribution and food service licensure. Public Institutions, Health and Human Services Committee. Vote 4-0. Ought to pass with amendment, Senator Wheeler for the committee.

**1999-0654s**

**01/09**

### **Amendment to SB 28**

Amend the bill by replacing section 5 with the following:

5 Sale of Beverages. Amend RSA 143:11, I(a) and (b) to read as follows:

I.(a) Upon receipt of an application in writing from a new beverage manufacturer, or from a beverage manufacturer that has changed ownership, or from a beverage manufacturer which has had its previous license revoked, the commissioner of the department of health and human services shall issue a provisional license, valid for up to 90 days, if the commissioner determines that the applicant's plant is properly equipped and in a sanitary condition and that the products manufactured there are not adulterated or misbranded. *Any beverage manufacturer which has had its license revoked shall not be eligible to reapply for a period of 3 years from the date of revocation. Notwithstanding RSA 541-A, any individual denied a full license at the end of the 90-day period shall immediately shut down his or her establishment, unless otherwise ordered by a court of competent jurisdiction.*

(b) Within 45 days of issuance of a provisional license under this section, the commissioner shall conduct an inspection. If, following inspection, the commissioner determines that the applicant's plant is properly equipped and in a sanitary condition and that the products manufactured there are not adulterated or misbranded, the commissioner shall issue a license valid until the January 1 next following the date of issuance of the provisional license. *Notwithstanding RSA 541-A, any individual denied a full license at the end of the 90-day period shall immediately shut down his or her establishment, unless otherwise ordered by a court of competent jurisdiction.*

Amend the bill by replacing section 8 with the following:

8 Food Service Licensure. Amend RSA 143-A:6, I and II to read as follows:

I. Upon receipt of an application in writing from a new food service establishment or retail food store, or a food service establishment or retail food store which has changed ownership or a food service establishment or retail food store which has had its previous license revoked, the commissioner shall issue a provisional license, valid for up to 90 days, if the commissioner determines that the applicant's plan for operation and facilities are sufficient under rules adopted under RSA 143-A:9. *If any*



*food service establishment or retail food store has had its license revoked, it shall not be eligible to reapply for a period of 3 years from the date of revocation. Notwithstanding RSA 541-A, any individual denied a full license at the end of the 90-day period shall immediately shut down his or her establishment, unless otherwise ordered by a court of competent jurisdiction.*

II. Within 45 days of issuance of a provisional license issued under this section, the commissioner shall conduct an inspection. If following such inspection the commissioner determines that the applicant's operation and facilities are sufficient under rules adopted under RSA 143-A:9, the commissioner shall issue to the applicant a license valid for a time period of one year following the date of issuance of the provisional license. *Notwithstanding RSA 541-A, any individual denied a full license at the end of the 90-day period shall immediately shut down his or her establishment, unless otherwise ordered by a court of competent jurisdiction.*

1999-0654s

#### AMENDED ANALYSIS

This bill clarifies procedures relative to sanitary production and distribution of food and food service licensure. The bill establishes a 3-year period for a facility, which has had its license, revoked before such facility may reapply for a license.

SENATOR WHEELER: Mr. President, I rise in support of SB 28. This bill clarifies the procedures relative to sanitary production and distribution of food and food service licensure. It was a request by the Department of Health and Human Services. It establishes a 3-year period for a facility, which has had its license, revoked before such facility may reapply for a license. The bill allows the commissioner of the Department of Health and Human Services the ability to issue a provisional license valid for up to 90 days, if the commissioner determines that the applicant's plan is properly equipped, and in a sanitary condition and that the products there are not adulterated or misbranded. The bill determines that any individual denied a full license at the end of that 90-days must immediately shut down his or her establishment. An amendment to this bill was offered and adopted by the committee, which allows an individual the opportunity to challenge the order for immediate shut down in a court of competent jurisdiction. This way, the courts may decide whether or not DHHS is fair in its ruling to put a facility out of business. This is an important amendment, because it provides a system for redress independent of the DHHS, therefore, I urge you to pass SB 28 as amended. Thank you.

**Amendment adopted.**

**Ordered to third reading.**

**SB 53-FN**, relative to licensure of physicians providing teleradiology services in this state. Public Institutions, Health and Human Services Committee. Vote 2-2, OTP/ITL. Ought to Pass, Senator Squires for the committee.

SENATOR SQUIRES: This bill defines the first tentative legislative involvement as the practice of medicine moves into the new age. Telecommunications transmits a transmission of data, images, lab results and etceteras over wires to another locality. What it is aimed at is a practice that exists today. It is deliberately narrow because we don't know where

this is going to lead. It is similar to legislation in other states. What it does is this. If there is a wholesale habit or practice of sending radiographic images and only some of them in fact, are transmissible, to an out-of-state physician for an interpretation, then the physician in the out-of-state area has to have a New Hampshire license. It is here today because a uniqueness of radiology which obtains its data by electronic images. We have had a long series of hearings on this bill, both public and legislative. We have heard for example, that it is not appropriate to pathology, that you cannot transmit a picture of a slide to someone else. The bill exempts clearly, the occasional referral less than 24 in fact, a year. What it aims at is an individual physician or an insurance company that contracts with a radiographic group in Indiana, sends them hundreds of images to be interpreted every year and they are accountable to nobody. That is the physicians in Indiana. It is a good bill. It is tentative to be sure. The whole world is tentative in this arena and probably at some point, will have to be expanded. But for the moment, it answers a definite need here and in other states. It is not, I believe, a radiologists protection act. I am not a radiologist, so it doesn't make any difference to me one way or the other, but what does make a difference is to make sure that whoever is reading those images comes up to the standards of the state of New Hampshire because the patients that they are reading them on reside in New Hampshire. I urge you to pass this bill as presented. Thank you.

SENATOR GORDON: I was one of the members of the committee who voted inexpedient to legislate. **TAPE INAUDIBLE** I guess when you have to choose between ought to pass or inexpedient to legislate, you have to make a decision which side you come down on, but I had a total different feeling in hearing the bill. I think that the purpose is good. I guess that the impression that I had is a little bit different. It is basically, a turf issue. If it weren't a turf issue, the bill would be written very differently. What we are saying, is that when doctors make referrals out to doctors out in other jurisdictions in other states, basically we need to know that they are qualified. Apparently this is happening and has happened for a very, very long time. So now we are going to make sure that they are licensed, but the only thing that this applies to is radiology. I guess the question that I had was, why is it only radiology? Then the answer to that was because they are the only ones who are really sending pictures out someplace or information out. But then if that is the case...no one has explained to me why you can send out 24 pictures and you don't need to be concerned with whether or not they are qualified, but if it is over 24, then they do have to be licensed to practice here. No one has explained to me why you aren't just equally likely to mess up if you are interpreting fewer pictures than more. It seems to me that it is directed at avoiding a situation where somebody hires an out-of-state radiology firm to do all of their radiology in Massachusetts for a hospital in New Hampshire. That is what it seems to be directed to prevent. I can't say that I honestly have an objection to the bill in principle, because I think that we want to make sure that people out in other jurisdictions are qualified, but I think that it should apply, to all people who are practitioners, not just the radiologists. If in fact we want to make it apply and it truly is a consumer protection bill, it should apply to everything that is sent out and not make an exception for under 24. As I said, it isn't that important to me, but I just wanted to explain why somebody might vote the other way on the bill.

SENATOR KRUEGER: Obviously my feelings ride along with those of Senator Gordon. I also had respect for the doctor who would make the referral and count on the doctor that I had contracted with to make sure that someone who was competent would read my X-rays or my family's X-rays. I also brought to the table the idea of the 24 thinking in terms that somewhere in the world there are people who have expertise in certain areas, and I would hope that if there were an epidemic, that we would be allowed to then send X-rays to Vienna, to California, to wherever they needed to, run by the best person in the world. Someone would not necessarily be licensed in the state of New Hampshire. I saw it also as a territorial issue; however, the intent of the bill without question, is to disallow incompetence from creeping into the medical profession. For that, I obviously applaud the sponsors. Thank you.

SENATOR WHEELER: I was the other ought to pass vote. We were down in our numbers that day. But telemedicine is becoming a major issue in the world as well as in other states. Some states have passed legislation, which regulates the process, and some have passed legislation, which expands and encourages this means of treating medicine. In New Hampshire as I think that we are all aware, we generally proceed incrementally, and although I would be perfectly in favor of voting to require everyone practicing telemedicine in New Hampshire from out-of-state to hold a New Hampshire license. That isn't going to pass. So we need to start with a small unit where it is obvious that there is a need. This is a quality control measure. In the case of X-ray transmissions, they can be sent in large batches to groups out-of-state who could be interpreting them, and where those people might not be qualified according to our standards, they might not hold any kind of medical license. This is possible. We want to protect the people in New Hampshire from inappropriate medical practice. That is what this bill does. With regard to Senator Krueger's well-expressed concern about wanting to have the best person possible to read your images, there is not anything in this legislation that would prevent that person from getting a license to practice medicine in New Hampshire. We heard testimony that if you are qualified, that this is quite an easy thing to do and not financially burdensome. So that person...so if you always wanted to send your X-rays to this one wonderful person in Scandinavia, you could do that, that person would just have to get a license in New Hampshire. Thank you.

SENATOR FERNALD: I wasn't going to speak on this. I was not part of the voting, but hearing that debate, I wanted to speak for a minute. When my daughter was six months old, I was walking with her across an icy parking lot in Massachusetts, and I slipped and fell. She hit her head. We took her to the nearest emergency room, and she was transmitted to the Children's Hospital and they X-rayed her and said that she was okay. This is a one-minute story, but it was hours of the day. We got in the door at midnight and the Children's' Hospital was on the phone and they said that they were re-reading the X-rays, please bring her back, she might have blood building up underneath her skull. We said, "Thank you very much, but we have a hospital here in Peterborough." We took her to the hospital in Peterborough, and I guess the emergency room person could run the CAT scan, they got the CAT scan technician in Bedford out of bed, who read this thing over the phone. So this was in-state. But this was the teleradiology that we are talking about. They did a CAT scan and they told us that it was a fracture and it was minor



and there was no blood, and that she was going to be okay and go back home and go to sleep. But the point here is that with teleradiology we really have medicine being practiced on the spot. Some of it is happening on one end of the wire in New Hampshire and some is happening on the other end of the wire in Massachusetts or somewhere else. If I had an X-ray and I mailed it to Massachusetts to be read, they don't need to be licensed here, and the decision is made when it is received there and so forth; but if this is all happening on-the-spot connected with a New Hampshire hospital, but somebody out of state, I think this bill is correct to say that those people should be licensed to practice here. I understand Senator Gordon's concerns, but I have been in this situation and I think that if medicines are being practiced in New Hampshire, and some are connected by telephone, they should be licensed too. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 100-FN-A-L**, establishing a pilot program to provide homeless people with free meals in exchange for volunteer work and continually appropriating certain funds for this purpose. Public Institutions, Health and Human Services Committee. Vote 4-0. Inexpedient to Legislate, Senator Gordon for the committee.

**SENATOR GORDON:** I rise in support of the committee recommendation of inexpedient to legislate. Senate Bill 100, establishing a pilot program to provide homeless people with free meals in exchange for volunteer work and continually appropriating certain funds for this purpose. The sponsor of the bill testified that the intent of this bill is to ensure that the homeless will receive free meals in exchange for volunteer work; however, it was discovered that current programs of this nature already exist, eliminating the need for this legislation. Seeing that the need is being met, the sponsor does not wish to proceed with the adoption of the bill; therefore, I urge to vote SB 100 as inexpedient to legislate.

**Committee report of inexpedient to legislate is adopted.**

**SB 134-FN**, relative to medicaid reimbursement rates and dental care. Public Institutions, Health and Human Services Committee. Vote 4-0. Ought to Pass, Senator Wheeler for the committee.

**SENATOR WHEELER:** I rise in support of SB 134. New Hampshire children on Medicaid have limited access to oral health services, in fact, in New Hampshire only 37.3 percent of eligible children actually received dental care in 1998. Data indicates that access is currently limited due to low dental reimbursement rates and the slow reimbursement payment process, the bureaucracy of the system, arbitrarily of denials, prior authorization requirements for routine services, and lack of use by the people that would be eligible. One of the components necessary to provide access to dental care for eligible children is to raise the reimbursement rates. This bill establishes a reimbursement rate of 80 percent of the usual and customary fees and is a critical step in coming into compliance with the federal Medicaid law, which includes oral health care for children. We are out of compliance right now with the federal Medicaid law and we are in the process of being sued again. We need to do something about it. This bill recognizes that reimbursement levels are not the only component of the access problem, but definitely a significant problem that can be corrected through this legislation. The Department of Health and Human Services testified that some form of reimbursement increase is part of

their multi-pronged approach to solving the dental access problem. They have also established a new oral health unit within the department and have stated that establishment of this unit demonstrates their commitment to improved dental services throughout the state and their overall commitment to the importance of oral health care. I urge you to think of the children of New Hampshire currently on Medicaid, and their need for oral health services and pass SB 134. Thank you.

SENATOR LARSEN: I just want to briefly rise to applaud Senator Wheeler and the sponsors of this bill in continuing to bring forward what we all know to be an incredibly large and difficult problem to solve for the state of New Hampshire. Having sat through the Health and Human Services Committees in the past years has been a continued problem that we cannot ignore, we cannot put it aside. We need to continue to look for ways to address the needs of dental health care, both for the adult population and for the children. Thank you very much.

**Question is on the committee report of ought to pass.**

**A roll call was requested by Senator D'Allesandro.**

**Seconded by Senator Pignatelli.**

**The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Disnard, Roberge, Blaisdell, Fernald, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.**

**The following Senators voted No:**

**Yeas: 23 - Nays: 0**

**Adopted.**

**Referred to the Finance Committee (Rule #24).**

**SB 137-FN**, relative to use of social security numbers in child support enforcement and in the issuance of driver's licenses. Public Institutions, Health and Human Services Committee.

**MINORITY REPORT:** Inexpedient to Legislate, Senator Krueger for the committee. Vote 1-3

**MAJORITY REPORT:** Ought to pass with amendment, Senator Squires for the committee. Vote 3-1

**1999-0659s**

**05/09**

### **Amendment to SB 137-FN**

Amend the bill by replacing section 1 with the following:

1 Revocation and Denial of Licenses; Child Support Enforcement. Amend RSA 161-B:11, VI-a to read as follows:

VI-a. The social security number of any applicant for a professional license, ~~commercial~~ driver's license, occupational license, **recreational license**, or marriage license shall be recorded on the application, provided that if the use of a number other than the social security number is allowed, ~~[the applicant shall be so advised. Any application required by this section to contain a]~~ **to be used on the face of the document, the social security number shall be kept on file at the agency. The** social security number shall be confidential and not subject to the right to know law. **Unless otherwise authorized by law,** the use of such number shall be limited to proceed-

ings or actions to establish paternity or to establish or enforce support and shall only be provided to or entered in any out-of-state or federal data base for those cases for which the department is providing services.

SENATOR KRUEGER: Mr. President, I rise in opposition of SB 137. While I was initially compelled to vote in favor of this legislation, I find that I cannot. I believe in the need for child support enforcement. As we all know, there are many, many negligent parents, many responsible ones, but unfortunately negligent ones to. These people are not living up to the responsibility of providing for their children; however, my concern with this bill lies with my belief of the individual's right to privacy. This bill, and I urge everyone in this room to read it carefully, allows the government the authority to **TAPE CHANGE** privacy and I feel that I must stand firm on my beliefs on this issue. While I see the need for the continued enforcement of child support, I do not agree that this is the best means of accomplishing that goal. I hope that you will understand that my vote is a vote not against child support enforcement, but a vote for the individual's right to privacy; therefore, I will vote SB 137 inexpedient to legislate. Thank you very much, Mr. President.

SENATOR SQUIRES: I rise in support of SB 137. On this end, the bill authorizes the retention of a social security number when individuals apply for a professional license, driver's license, occupational license, marriage license or a recreational license. The bill also allows a number other than the social security number to be used on the face of the document, provided that the social security number is kept on file. In addition, this amendment requires a social security number to be kept confidential and is not subject to the right to know law unless otherwise authorized by law. The bill as amended brings New Hampshire into compliance with two federal laws, the Welfare Reform Act and the Immigration Reform Act. The Balanced Budget Act of 1997 broadened the Welfare Reform Act by mandating collection of all drivers' license and social securities. Federal House Resolution 3130, the Child Support Performance and Incentive Act of 1998, requires compliance with the social security number collection of October 1, 2000. In addition, the Immigration Reform Act calls for the collection of the social security numbers for all drivers, license. As represented in the fiscal note, there are potential sanctions for not passing the bill. In order for New Hampshire to have an approved state plan to administer the Child Support Program, the state must have a law that provides for the collection of social security numbers as reflected in this bill. The potential loss is estimated to be \$12.1 million, including the loss of the TANF Grants. Now for the issue of privacy. I have a list here of when you submit your social security number, and I will bore you. First of all, when you look for a job, including this one, and I suspect every one of you submitted your social security number to the government. When you seek health insurance, my social security number is on my Blue Cross card. So whenever I go into the hospital - there is my number. Delta Dental prints your social security number on your dental card. When you look for a credit card, when you open a checking account, when you purchase or sell a security, when you open an IRA, when you lease a car, when you obtain a mortgage, when you rent an apartment, when you go to the emergency room, when you file your federal tax, when you pay your state tax, when you seek a home equity loan, when you receive Medicaid benefits, when you enroll in Medicaid, when you receive dis-



ability payments, when you purchase an item on credit, when you seek a professional license, when you apply to a school of higher learning and when you enlist into the military. Now, if it were not for that list, the privacy of this issue of this bill might be germane, but the fact is, in the world in which we live, your social security number is common currency for all of these, plus many more. So how is it that we cheerfully, usually, submit to this, and the bill as presented as is, is an invasion of your privacy? I simply do not agree, and I think arguments to bring us into conformity and to assist in the efforts of child support out weigh the privacy issues as stated. Thank you.

SENATOR FRANCOEUR: Senator Squires, when I go into a store to buy something and they ask for my driver's license, is it because they want my social security number or my driver's license number?

SENATOR SQUIRES: They want your driver's license number.

SENATOR FRANCOEUR: My understanding of the federal requiring that we have to have our social security numbers when we apply for a driver's license, is it not correct that we have a magnetic strip on the back of them; that those that need to read it can read it, and if it were put onto the magnetic strip instead of being on the front in bold print as this statute here, that that would also cover the federal requirement?

SENATOR SQUIRES: The social security number, if it is your desire, is not printed on the license.

SENATOR FRANCOEUR: That is correct, but when the state makes our licenses, the back of our licenses have a magnetic strip. Couldn't that magnetic strip hold the social security number, so that those who feel for privacy, it would be on there and it would cover the mandates that when we issue a driver's license that they do have our social security numbers, and that by putting it on the magnetic strip that those who do not want to show an individual their social security number would also be covered, it would be a compromise, and maybe it would be better?

SENATOR SQUIRES: Yes, we could certainly do that, given the fiscal constraints that are upon us, I don't think that is likely to happen. I repeat, you don't show your social security number on your license to anybody because it isn't there, unless you want it to be there.

SENATOR FRANCOEUR: If I am missing something, on line seven, this says that "the number will appear on the face of the license."

SENATOR SQUIRES: Unless the applicant requests the use of a number other than your social security. You have an opt out box on the license application. You can put down your birth date, I guess. Any number. It is up to the individual as to whether or not your social security number appears on your license.

SENATOR FRANCOEUR: So what you are telling me is that if I go into the department to pick up a new license, then I can check off my box and say "no, I don't want my social security on there" and are we going to create another box that says what number would you like instead?

SENATOR SQUIRES: It will say that you do not wish your social security number on there, at which point you will get an assigned number unless you have a number of your own, is my understanding. Nothing in this bill compels the appearance of your social security number on your license.

SENATOR FRANCOEUR: Then, Senator Squires, would you feel bad that if we amended the bill to say that the social security number wasn't on the face that it was just on the license?

SENATOR SQUIRES: I don't think that I understand that question?

SENATOR FRANCOEUR: Would you entertain an amendment that would say that your social security number has to be on your license?

SENATOR SQUIRES: I don't want it on the license. That is just a personal choice. I think that it is up to the individual to decide that.

SENATOR FRANCOEUR: Ok. Thank you.

SENATOR HOLLINGWORTH: Senator Squires, this is just the exchange between the Department of Safety and the Department of Health and Human Services, is that not the case?

SENATOR SQUIRES: That is correct.

SENATOR HOLLINGWORTH: Isn't it also the case that as you stated that it is about \$12.1 million that we would lose in federal dollars because of our non compliance with the requirement to do so?

SENATOR SQUIRES: That was the testimony given at the time of the hearing.

SENATOR HOLLINGWORTH: Also the TANF Grants as well?

SENATOR SQUIRES: Also entered in the public testimony.

SENATOR HOLLINGWORTH: Isn't it true that the state spends millions of dollars to try to collect the support orders and this would help us in doing so?

SENATOR SQUIRES: Without a doubt.

SENATOR HOLLINGWORTH: Thank you.

SENATOR GORDON: I am supporting the majority report of ought to pass, but I don't give it without misgivings. To the federal government, my name is 0023608222, okay? That is how they identify me. The other day in my office, I got a letter from a private investigator that wants me to use his services. It was a letter and it said for a fixed amount of money this is our package deal, "If you provide me with a name of a person and their social security number, I will provide you with the following information." I wish that I would have brought it today, but it was a half a page long. It had everything to do with criminal records, buying history, more information than you could possibly imagine family members. I am not really concerned necessarily about the government having my social security number. I am concerned about what the government can do with my social security number, and what other people can do because that is my identity, okay? And that is wrong. I think that we have gone too far. It is great to have an efficient government, and we all want efficiency in government, but when that efficiency and government comes at the expense at your individual identity, then we have gone too far. I guess that I have to vote for this bill because it means a lot of money to us. The federal government is holding us hostage for the money, so we have to do this. But I am telling you that I think that we have really gone too far there and at some point in time...I work very hard as many of you did a couple of years ago to get that social security number off of the face of the license. Now we are giving back again. When does it stop? Sometime we have to say no.

SENATOR FERNALD: There seems to be some misunderstanding here so I just wanted to point out that the bill does not require the social security number to be on the license. It requires the department to keep the social security number in the application process. The reason is to track down deadbeat parents who aren't paying child support. There are, unfortunately, people who do not support their children and this being a big country, there are a lot of places for them to hide. This is a requirement from the federal government and it is being across the country so that these people who are not living up to their obligations can be tracked down. People are saying that this is a question of right to privacy. It is not at all a question of right to privacy. If we do not use these means to find these people, we are talking about a right to hide. A right to anonymity and that is something else again. This is an important piece of legislation and I appreciate your support.

SENATOR KRUEGER: I just want to remind everyone or, if you look at the bill, what was there before. The difference is what I am objecting to. Despite the federal government putting mandates that we need to provide this information. Formally, it said "the application form for a driver's license or renewal of a driver's license 'may' request the social security number of the applicant. An applicant for the renewal of a driver's license who is a resident of New Hampshire, shall be given the 'opportunity' to determine whether to provide the social security number." This bill changes that. That is a big change. Whatever we have been handed down as the reason for it, I wanted to bring to this bodies mind, exactly the incremental movement toward identification of every one of us. Thank you.

SENATOR LARSEN: A couple years ago I worked on the language in line two of page two that said that the applicant form has a box to check off if you do not wish to have your social security number printed on the license. That language is still there. If you read this carefully, this language says that you have to provide as an applicant, your social security number. That can be and must be part of the application process; however, if you look at the language that was referred to by the prior speaker on line 20, the language says that the social security number shall be recorded on the application not on the license. That the applicant on line seven, page one, has the ability to advise whether or not that appears on the license; however, the ability to have the check off box, to say that you do not want your social security number on your license, remains on law on page two, line two. This allows the department to hold the information as part of the application. There is still the opt out feature remaining in current law. Thank you.

**Amendment adopted.**

**Ordered to third reading.**

**SB 225-FN**, relative to a pharmaceutical program for low income individuals. Public Institutions, Health and Human Services Committee. Vote 4-0. Rereferred to Committee, Senator Squires for the committee.

SENATOR SQUIRES: The sponsor of this bill, Senator Hollingworth, asked us to re-refer it for a number of reasons. First of all, there is some question as to whether or not the population of New Hampshire can support an effective measure to accomplish a reduction in pharmaceutical costs. Secondly, the Department of Health and Human Services has underway, a program to meet similar ends. Finally, there may be an opportunity for New Hampshire to enter into a cooperative agreement with our



neighboring states and, if that were to happen, we would have a much bigger purchasing pool and a much bigger impact on the cost of pharmaceuticals. So we would just like to keep this alive and re-refer it and see what happens in the next three to six months with these other issues.

**Adopted.**

**SB 225-FN is rereferred to the Public Institutions, Health and Human Services Committee.**

**Recess.**

**Out of Recess.**

### **TAKEN OFF THE TABLE**

Senator D'Allesandro moved to have **HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products, taken off the table.

**Adopted.**

**Recess.**

**Senator Wheeler in the Chair.**

**HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products.

Senator D'Allesandro offered a floor amendment.

Sen. D'Allesandro, Dist. 20

Sen. Trombly, Dist. 7

**1999-0681s**

**09/01**

### **Floor Amendment to HB 112-FN-A**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to state taxes and other sources of revenue for funding an adequate education; authorizing electronic games of chance at racetracks, grand hotels, and resort hotels; relative to establishing the cost of an adequate education, and relative to creating a commission to study the methodology used in establishing the cost of an adequate education, and making an appropriation therefor.

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose; Intent.

I. In December 1997, the New Hampshire supreme court in the Claremont II decision ruled that it is the state's duty to define and provide all New Hampshire's public school students with an adequate education, and further that the manner of raising revenue to pay for an adequate education be through a system of taxation that is proportional in substance and just and reasonable in application.

II. Through the passage of House Bill 1075, the general court defined an adequate education. The definition grew out of work undertaken in the early 1990's to develop curriculum frameworks which specifically address the importance of establishing and measuring what all New Hampshire students should know and be able to do. The curriculum frameworks were developed with the widespread participation of educators, business people, government officials, community representatives, and parents. They have evolved into a critical component of providing a quality public education to New Hampshire students.

III. The New Hampshire educational improvement and assessment program ("NHEIAP") tests were developed in conjunction with the curriculum frameworks as a measure of student performance. The general court therefore finds that the NHEIAP tests are a measure of student performance and can be used to develop and implement effective methods for assessing learning and its application. The general court further finds that in determining the cost of a constitutionally adequate education, performance based outcome criteria, specifically the NHEIAP test scores, can be used to identify school districts that are delivering such a constitutionally adequate education. The NHEIAP tests are comprehensive and difficult. Students taking these tests in the third, sixth, and tenth grades are scored on 4 levels of performance: novice, basic, proficient, and advanced. The general court finds that students who score in the basic, proficient, and advanced levels on these state tests are making progress toward achieving the goals set forth in House Bill 1075.

IV. The general court recognizes the inherent imprecision, subjectivity, and difficulty in determining the cost of an adequate education. Numerous complex financial, budgetary, administrative, and educational elements must be in place in order for the state to fully meet the mandates of Claremont II. Those mandates coupled with the policy of the state recognize that an adequate public education is not a static concept removed from the demands of an evolving world. An adequate education transcends mere competence in the reading, writing and arithmetic. Such an education shall provide all students with a meaningful opportunity to acquire the knowledge and skills necessary to prepare them for successful participation in the social, economic, scientific, technological, and civic realities of society, now and in the years to come. To ensure these fundamental rights, as recognized by the court, thoughtful and deliberate planning with the involvement of many sources of expertise as well as phased-in implementation of the major elements over time is required. Concomitantly, such planning and implementation is required in order to ensure:

(a) That the educational needs of all children are met, including regular education students, students with special needs such as students with disabilities, students who are economically disadvantaged or are otherwise educationally at risk, or those who are intellectually gifted;

(b) That the needed changes are long-term in nature, truly embedded on the local and state level, gain acceptance and are both cost and educationally effective, and to those ends address underlying or systemic issues; and

(c) That compliance with all applicable federal laws occurs.

V. Under Claremont II, and as recently reaffirmed by the court in its November 1998 opinion, a funding system for a constitutionally adequate education must be put in place. This bill provides for a constitutionally adequate education that is reasonably and proportionally funded through a combination of revenue sources.

VI. However, in order to meet the aforementioned competing requirements of a long-range, carefully planned, and phased-in solution and to address the need to have an acceptable system in place, this act establishes a special commission to develop long-term plans and solutions to comprehensively and permanently meet constitutional mandates.

2 Cigarette Tax. Amend RSA 78:7 to read as follows:

78:7 Tax Imposed. A tax upon the retail consumer is hereby imposed at the rate of [37] 42 cents for each package containing 20 cigarettes or at a

rate proportional to such rate for packages containing more or less than 20 cigarettes, on all tobacco products sold at retail in this state. The payment of the tax shall be evidenced by affixing stamps to the smallest packages containing the tobacco products in which such products usually are sold at retail. The word "package" as used in this section shall not include individual cigarettes. No tax is imposed on any transactions, the taxation of which by this state is prohibited by the Constitution of the United States.

3 New Subdivision; Disposition of Tobacco Tax Revenues; Special Fund. Amend RSA 78 by inserting after section 31 the following new subdivision:  
Disposition of Revenues

78:32 Disposition of Revenues. Three million dollars of the gross revenues collected under this chapter shall be deposited at the end of each fiscal year beginning June 30, 2000 in the tobacco use prevention and cessation fund established in RSA 78:33.

78:33 Tobacco Use Prevention and Cessation Fund. There is established within the office of the state treasurer a tobacco use prevention and cessation fund. Money from this fund shall be continually appropriated to the department of health and human services for tobacco use prevention and cessation programs and shall be allocated as follows:

	<u>Percentage</u>	<u>Amount</u>
I. Tobacco use prevention community programs and grants	25	\$750,000
II. Tobacco use prevention school programs and grants	18	\$540,000
III. Tobacco use prevention state-wide programs and grants	15	\$450,000
IV. Tobacco use cessation programs	15	\$450,000
V. Tobacco use prevention and cessation counter marketing	18	\$540,000
VI. Evaluation	5	\$150,000
VII. Administration and enforcement	4	\$120,000

4 New Subparagraph; Special Fund. Amend RSA 6:12, I by inserting after subparagraph (vvv) the following new subparagraph:

(www) Three million dollars of the annual gross revenues of the tobacco tax collected under RSA 78, which shall be credited as provided in RSA 78:32 to the tobacco use prevention and cessation fund established under RSA 78:33.

5 Applicability. Section 2 of this act shall apply to all persons licensed under RSA 78:2. Such persons shall inventory all taxable tobacco products in their possession and file a report of such inventory with the department of revenue administration on a form prescribed by the commissioner within 20 days after the effective date of this act. The tax rate effective on the effective date of section 2 of this act, shall apply to such inventory and the difference, if any, in the amount paid previously on such inventory and the current effective rate of tax shall be paid with the inventory form. The inventory form shall be treated as a tax return for the purpose of computing penalties under RSA 21-J.

6 Gender Reference Change. Amend the introductory paragraph of RSA 21-J:3 to read as follows:

In addition to the powers, duties, and functions otherwise vested by law, including RSA 21-G, in the commissioner of the department of revenue administration, ~~he~~ **the commissioner** shall:

7 Duties of Commissioner. Amend RSA 21-J:3, XIII to read as follows:

XIII. Equalize annually the valuation of the property in the several towns, cities, and unincorporated places in the state, **including the value of property exempt pursuant to RSA 72:36-b, 72:37-b, 72:39-a, 72:62,**



**72:66, and 72:70**, by adding to or deducting from the aggregate valuation of the property in towns, cities, and unincorporated places such sums as will bring such valuations to the true and market value of the property, including the equalized value of property formerly taxed pursuant to the provisions of RSA 72:7; 72:15, I, V, VII, VIII, IX, X, and XI; 72:16; 72:17; 73:26; 73:27; and 73:11 through 16 inclusive, which were relieved from taxation by the laws of 1970, 5:3; 5:8; 57:12; and 57:15, the equalized valuation of which is to be determined by the amount of revenue returned in such year in accordance with RSA 31-A, and by making such adjustments in the value of other property from which the towns, cities, and unincorporated places receive taxes *or payments in lieu of taxes* as may be equitable and just, so that any public taxes that may be apportioned among them shall be equal and just. *In carrying out the duty to equalize the valuation of property, the commissioner shall follow the procedures set forth in RSA 21-J:9-a.*

8 Duties of the Commissioner. Amend RSA 21-J:3, XV to read as follows:

XV. Establish and approve tax rates as required by law *including the uniform education tax rate.*

9 New Paragraph; Duties of Commissioner. Amend RSA 21-J:3 by inserting after paragraph XXIV the following new paragraph:

XXV. Petition the board of tax and land appeals to issue an order for reassessment of property pursuant to the board's powers under RSA 71-B:16-19 whenever the valuation of property for equalization purposes in a particular city, town, or unincorporated place is disproportional to the valuation for equalization purposes in other cities, towns, or unincorporated places in the state.

10 Division of Property Appraisal; Department of Revenue Administration. RSA 21-J:9 is repealed and reenacted to read as follows:

21-J:9 Division of Property Appraisal. There is established within the department the division of property appraisal, under the supervision of a classified director of property appraisal who shall be responsible for the following functions, in accordance with applicable laws:

I. Assisting and supervising municipalities and appraisers in appraisals and valuations as provided in RSA 21-J:10 and RSA 21-J:11.

II. Appraising state-owned forest and recreation land under RSA 227-H and RSA 216-A.

III. Annually determining the total equalized valuation of properties in the cities and towns and unincorporated places according to the requirements of RSA 21-J:9-a.

IV. Preparing a standard appraisal manual which may be used by assessing officials, and holding meetings throughout the state with such officials to instruct them in appraising property.

11 New Section; Equalization Procedure. Amend RSA 21-J by inserting after section 9 the following new section:

21-J:9-a Equalization Procedure. The following procedures shall apply in determining the equalization of property within the cities, towns, and unincorporated places as required by RSA 21-J:3, XIII:

I. The commissioner shall annually conduct a sales-assessment ratio study which shall include arm's length sales or transfers of property that occurred 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made.

II. In determining the arm's length sales or transfers that are included in the sales-assessment ratio study, the commissioner may use a randomly selected sample of such sales and transfers the size of which shall be determined by the total taxable parcels in the city, town, or unincorporated place.

III. If less than 2 percent of the total taxable parcels in a city, town, or unincorporated place has been transferred by an arm's length sale or transfer during the 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made or the commissioner determines the sales are not representative of the property within the municipality, the commissioner may choose one or more of the following options:

(a) Include appraisals of any of the taxable property of such city, town, or unincorporated place in the sales-assessment ratio study. Such appraisals shall be based on full and true market value pursuant to RSA 75:1 and shall be performed by department appraisers. The property to be appraised shall be selected by the commissioner.

(b) Consider recent equalization ratio activity in adjoining cities, towns, or unincorporated places.

(c) Include arm's length sales or transfers in the city, town, or unincorporated place, within 2-1/2 years preceding April 1 of the year preceding the tax year for which such equalization is made.

IV. The commissioner shall use the inventory of property transfers authorized by RSA 74:18 in determining the equalized value of property and may consider such other evidence as may be available to the commissioner on or before the time the final equalized value is determined.

12 Appraisals of Property for Ad Valorem Tax Purposes. RSA 21-J:11 is repealed and reenacted to read as follows:

21-J:11 Appraisals of Property For Ad Valorem Tax Purposes.

I. Every person, firm, or corporation intending to engage in the business of making appraisals on behalf of a municipality for tax assessment purposes in this state shall notify the commissioner of that intent in writing. No person, firm, or corporation engaged in the business of making appraisals of taxable property for municipalities and taxing districts shall enter into any contract or agreement with any town, city, or other governmental division without first submitting the proposed contract or agreement to the commissioner for examination and approval and submitting to the commissioner evidence of financial responsibility and professional capability of personnel to be employed under the contract.

II. The commissioner, at no expense to the municipality, shall monitor appraisals of property and supervise appraisers as follows:

(a) Assure that appraisals comply with all applicable statutes and rules;

(b) Assure that appraisers are complying with the terms of any appraisal contract;

(c) Review the accuracy of appraisals by inspection, evaluation, and testing, in whole or in part, of data collected by the appraisers; and

(d) Report to the governing body on the progress and quality of the municipality's appraisal process.

III. The commissioner shall adopt rules under RSA 541-A relative to the provisions required of all contracts for appraisal services and the methodology for inspection, evaluation, and testing of data for the purposes of appraisal monitoring.

13 Reports Required. Amend the introductory paragraph of RSA 21-J:34 to read as follows:

The governing body of each city, town, unincorporated [~~town, unorganized~~] place, school district, and village district, and the clerk of each county convention shall submit to the commissioner of revenue administration the following reports necessary to compute and establish the

**uniform education property tax rate and the** tax rate for each city, town, unincorporated ~~[town, unorganized]~~ place, school district, village district, and county. The commissioner shall adopt rules under RSA 541-A establishing the form and content of these reports:

14 New Paragraph; Reports Required. Amend RSA 21-J:34 by inserting after paragraph XIV the following new paragraph:

XV. A report filed by the assessing officials of each city, town, and unincorporated place shall certify sales-assessment information necessary for the department to conduct the annual sales-assessment ratio study required by RSA 21-J:9-a. This report shall be filed within 45 days after receipt from the department.

15 New Paragraph; Setting of Tax Rates by Commissioner. Amend RSA 21-J:35 by inserting after paragraph I the following new paragraph:

I-a. The commissioner shall set the uniform education property tax rate at \$5.75 on each \$1,000 of total equalized value of all property in the municipality as determined under RSA 21-J:3, XIII.

16 Revenue Sharing. Amend RSA 31-A:4, I to read as follows:

I. Its 1978 distribution under RSA 31-A plus its share under the equalized formula of an annual increase of 5 percent in the previous year's aggregate distribution, through the year 1981, excluding revenues derived from RSA 77-A:20. ***The amount of money which is removed from the formula for deposit in the education trust fund shall not affect the remaining municipal revenue sharing distribution. The same amount distributed to each municipality in fiscal year 1998, excluding the amount apportioned to the school district in the 1998 property tax calculations, shall be distributed to each municipality in fiscal year 1999 and each year thereafter until the legislature revises the formula or provides additional appropriations that will affect the distribution amount.***

17 Board of Tax and Land Appeals; Authority. Amend RSA 71-B:5, II to read as follows:

II.(a) To hear and determine ~~[any]~~ appeals ***by municipalities*** relating to the ~~equalization of valuation performed~~ ***equalized valuation of property determined*** by the commissioner of revenue administration pursuant to RSA 21-J:3, XIII. Any ~~[town]~~ ***municipality*** aggrieved by ~~[an]~~ ***its*** equalized valuation as determined by the commissioner of revenue administration must appeal to the board in writing within 30 days of ~~[the town's notification]~~ ***notice of [the] its final*** equalized valuation by the commissioner. ***The board shall hear and make a final ruling on such appeal within 45 days of its receipt by the board. The board's decision on such appeal shall be final pending a decision by the supreme court of any appeal by any municipality of a board's decision. The supreme court shall give any appeal under this section priority in the court calendar.***

(b) ***Decisions by the supreme court on appeals made under subparagraph (a) that are issued prior to September 15 shall be used by the commissioner of revenue administration in determining the taxes to be raised by each municipality in the tax year commencing April 1 of the succeeding year.***

(c) ***Decisions by the supreme court on appeals made under subparagraph (a) that are issued after September 15 shall be used by the commissioner of revenue administration in determining the taxes to be raised in the tax year commencing April***



***1 of the second succeeding year. Any adjustments that need to be made to a municipality's tax rate based on a decision by the supreme court under this subparagraph shall be made by the commissioner of revenue administration in the tax year commencing April 1 of the second succeeding year.***

18 New Paragraph; Order for Reassessment. Amend RSA 71-B:16, IV to read as follows:

IV. When a complaint is filed with the board alleging that all of the taxable real estate or taxable property in a taxing district should be reassessed or newly assessed for any reason, provided that such complaint must be signed by at least 50 property taxpayers or 1/3 of the property taxpayers in the taxing district, whichever is less[-]; or

***V. When the commissioner of revenue administration files a petition with it pursuant to RSA 21-J:3, XXV.***

19 New Section; Inventory of Property Transfers. Amend RSA 74 by inserting after section 17 the following new section:

74:18 Inventory of Property Transfers.

I. In order to properly equalize the value of property under RSA 21-J:3, XIII, an inventory of property transfers shall be filed with the department of revenue administration and with the municipality where the property is located for each transfer of real estate or interest in real estate. Each form may include the following information:

(a) The buyer and seller's names and post transaction addresses and the name and address of a contact person if the buyer or seller is a trust or corporation.

(b) A description of the exact location of the property by town, street, and the assessor's map, lot, and block number.

(c) The acreage included in the sale.

(d) An accurate description of the property included in the sale, the neighborhood where the property is located, and the type and style of the property sold.

(e) The buyer's ownership interest in the property.

(f) The sale price, date of transfer, and the amount mortgaged.

(g) The description of the type of transfer that has taken place.

(h) The amount of personal property included in the sale price.

(i) Whether the property was previously occupied and whether the property will serve as the buyer's primary residence.

(j) The financing arrangements made to purchase the property to be answered at the option of the buyer.

(k) Whether any concessions were made in the sale.

(l) Whether the property was in current use.

(m) Whether land use taxes were considered in the sale.

(n) The buyer's dated signature certifying that the information indicated on the form is true.

II. The inventory of property transfers required by this section shall be filed with the department of revenue administration and with the municipality where the property is located by the purchaser, grantee, assignee, or transferee, no later than 30 days from the recording of the deed at the register of deeds or transfer of real estate, whichever is later. Persons required to file the inventory of property transfers who willfully fail to file or willfully make false statements on the forms shall be guilty of a violation.

III. No deed, recording a transfer of real estate or any interest in real estate, executed before October 1, 1995, shall be required to comply with this section.

IV. Failure to comply with this section shall not be construed to cloud title.

V. Any information provided to the department or the municipality pursuant to this section shall be exempt from the right-to-know law, RSA 91-A.

20 Education Property Tax. RSA 76:3 is repealed and reenacted to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate calculated by the commissioner of revenue administration pursuant to the authority granted in RSA 21-J:35, I-a is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except such property subject to tax under RSA 82.

21 What Taxes Assessed. Amend RSA 76:5 to read as follows:

76:5 What Taxes Assessed. The selectmen shall seasonably assess all state and county taxes for which they have the warrants of the [state] **commissioner of revenue administration** and county treasurers respectively; all taxes duly voted in their towns; and all school[, ~~school-house,~~] and village district taxes authorized by law or by vote of any school or village district duly certified to them; and all sums required to be assessed by RSA 33.

22 Commissioner's Warrant. RSA 76:8 is repealed and reenacted to read as follows:

76:8 Commissioner's Warrant.

I. The commissioner of revenue administration shall annually calculate the proportion of the education property tax to be raised by each municipality by multiplying the uniform education property tax rate by the total equalized value of all property in the municipality as determined under RSA 21-J:3, XIII.

II. The commissioner shall issue a warrant under the commissioner's hand and official seal for the amount computed in paragraph I to the selectmen or assessors of each municipality at the time of the setting of the tax rate directing them to assess such sum and pay it to the municipality for the use of the school district or districts and, if there is an excess education tax payment due under RSA 198:47, I, directing them to assess the amount of that excess education tax payment and pay it to the department of revenue administration for deposit in the education trust fund. The commissioner shall also issue a warrant under the commissioner's hand and official seal for such sums and at such times as may be prescribed for other taxes assessed by such selectmen or assessors of the municipality.

III. Municipalities are authorized to assess and collect property taxes locally to meet budgeted expenses of education not funded through distributions from the education trust fund under RSA 198:39.

23 Commissioner's Report. RSA 76:9 is repealed and reenacted to read as follows:

76:9 Commissioner's Report. The commissioner of revenue administration shall report to the governor, the speaker of the house of representatives, the president of the senate, and the commissioner of education each year on or before October 1, a statement of the education property tax warrants to be issued for the tax year commencing April 1 of the succeeding year.

24 Information Required. Amend RSA 76:11-a, I to read as follows:

I. The tax bill which is sent to every person taxed, as provided in RSA 76:11, shall show the rate for municipal, [school] **local education, state education**, and county taxes separately, the assessed valuation of all

lands and buildings for which said person is being taxed, and the right to apply in writing to the selectmen or assessors for an abatement of the tax assessed as provided under RSA 76:16. The department of revenue administration shall compute for each town and city the rates which are to appear on the tax bills and shall furnish the required information to the appropriate town or city.

25 Extent. Amend RSA 85:1 to read as follows:

85:1 Who May Issue. The state treasurer *or the commissioner of revenue administration*, and each county and town treasurer, may issue extents under their hands and seals respectively, in cases authorized by law, and such extents shall be deemed to be executions against the person and property.

26 New Subdivisions; State Aid for Educational Adequacy; Education Trust Fund; Excess Education Property Tax Payment; Commission. Amend RSA 198 by inserting after section 37 the following new subdivisions:

State Aid for Educational Adequacy; Education Trust Fund

198:38 Definitions. In this subdivision:

I. "Municipality" means a city, town, or unincorporated place.

II. "School district" means school district as defined in RSA 194:1 or RSA 195:1.

III. "Elementary school" means a school with any of the grades kindergarten through 8.

IV. "High school" means a school with any of the grades 9 through 12.

V. "Average base per pupil cost of an elementary school pupil" means the amount as determined in accordance with RSA 198:40.

VI. "Weighted pupils" means resident pupils who have been assigned to one or more of the following classifications:

(a) An elementary pupil, which shall include kindergarten pupils, 1.0.

(b) A high school pupil, 1.2.

(c) An elementary pupil who is eligible to receive a free or reduced-price meal shall receive an additional weight of .14.

VII. "Educationally disabled child" means an educationally disabled child as defined in RSA 186-C:2, I.

VIII. "Consumer price index" means the consumer price index for all items for urban consumers for the Northeast published by the United States Department of Labor.

IX. "Special education costs" means the cost of special education and educationally related services provided to educationally disabled children reported by school districts on the MS-25 form less any federal IDEA funds, state special education catastrophic aid, and special education medicaid reimbursement received by the districts.

X. "Average daily membership in attendance" means average daily membership in attendance as defined in RSA 189:1-d, III.

XI. "Average daily membership in residence" and "resident pupils" mean the average daily membership in residence as defined in RSA 189:1-d, IV.

XII. "Transportation costs" means the costs of transporting pupils to and from school and other school activities reported by school districts on the MS-25 form.

198:39 Education Trust Fund Created and Invested.

I. The state treasurer shall establish an education trust fund in the treasury. Moneys in such fund shall not be used for any purpose other than to distribute adequate education grants to municipalities' school districts pursuant to RSA 198:42 and make catastrophic aid payments under RSA 186-C:18, III(d). The state treasurer shall deposit into this fund immediately upon receipt:



(a) The full amount of excess property tax payments from the department of revenue administration pursuant to RSA 198:47.

(b) The total amount of hardship claims reported by the commissioner of revenue administration under RSA 198:48, VII.

(c) All moneys due the fund in accordance with RSA 284:21-j.

(d) The school portion of any revenue sharing funds distributed pursuant to RSA 31-A which were apportioned to school districts in the property tax rate calculations in 1998.

(e) Tobacco settlement funds in the amount of \$20,000,000 annually.

(f) Any other moneys appropriated from the general fund.

II. The education trust fund shall be nonlapsing. The state treasurer shall invest that part of the fund which is not needed for immediate distribution in short-term interest-bearing investments. The income from these investments shall be returned to the fund.

198:40 Methodology for Calculating the Cost of an Adequate Education.

I. For the fiscal year beginning July 1, 1999, the average base per pupil cost of an elementary school pupil shall be \$2,879.

II. For the fiscal year beginning July 1, 2000, the average base per pupil cost of an elementary school pupil shall be \$2,922.

III. For the biennium beginning July 1, 2001, and every biennium thereafter, the average base per pupil cost of an elementary school pupil shall be established by the general court.

IV. If the general court makes no change in the average base per pupil cost of an elementary school pupil, the average base per pupil cost for the previous fiscal year shall be adjusted by the change in the consumer price index between the January immediately preceeding the beginning of the fiscal year of distribution and the second preceding January. In making the calculations required by this subdivision in subsequent fiscal years, the department of education shall use the average daily membership in residence, special education costs, and transportation costs for the second preceding school year and the district percentage of pupils eligible to receive a free or reduced-priced meal reported to the department of education on October 1 of the second preceding calendar year.

V. The weighted average daily membership in residence for each district shall be calculated by combining the district's elementary average daily membership in residence with its weighted high school average daily membership in residence and the district's additional average daily membership in residence resulting from elementary pupils eligible to receive a free or reduced-priced meal. The statewide weighted average daily membership in residence of pupils shall be calculated by combining the weighted average daily membership in residence of each school district in the state.

VI. For each fiscal year, the statewide cost of an adequate education for all pupils shall be calculated by multiplying the average base per pupil cost of an adequate education by the statewide weighted average daily membership in residence of pupils and then adding 99.5 percent of total statewide special education costs plus 70 percent of total statewide district transportation costs.

198:41 Determination of Adequate Education Grants.

I. Except for municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of revenue administration shall determine the amount of the adequate education grant for the municipality as follows:

(a) Multiply the average base per pupil cost of an adequate education by the weighted average daily membership in residence for the municipality;

(b) Add to the product of subparagraph (a), 70 percent of the municipality's apportioned transportation cost;

(c) Add to the sum of subparagraph (b), 99.5 percent of the municipality's apportioned special education cost;

(d) Subtract from the sum of subparagraph (c) the amount of the education property tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76:9 for the next tax year.

II. For municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of revenue administration shall determine the amount of the adequate education grant for each municipality as the lesser of the following 2 calculations:

(a) The amount calculated in accordance with paragraph I of this section; or

(b) The total amount paid for items of current education expense as determined by the department of education minus the amount of the education property tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76:9 for the next tax year.

#### 198:42 Distribution Schedule of Adequate Education Grant.

I. The adequate education grant determined in RSA 198:41 shall be distributed to each municipality's school district or districts from the education trust fund in 4 payments of 20 percent on July 1, 20 percent on September 1, 30 percent on January 1, and 30 percent on April 1 of each school year.

II. For the fiscal year ending June 30, 2000, an amount calculated by the commissioner of revenue administration necessary to fund the grants under RSA 198:41 is hereby appropriated from the education trust fund created under RSA 198:39 to the department of revenue administration.

III. The general court is constitutionally obligated to fund the cost of an adequate education, and there are hereby appropriated the funds necessary to make the payments required under RSA 198:41. The governor is authorized to draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

IV. The department of revenue administration shall certify the amount of each grant to the state treasurer and direct the payment thereof to the school district. When a payment of a grant is made to a school district, the municipality on whose behalf the payment is made, shall receive notification from the state treasurer of the amount of the payment made to its school district or districts.

198:43 Additional Education Expenditures. School districts are authorized to dedicate additional resources to schools and to develop educational programs beyond those required for an adequate education. School districts shall raise and appropriate funds to meet budgeted expenses of education not funded through distributions from the education trust fund under RSA 198:39.

#### 198:44 Use of Funds for Education Purposes.

I. Annually, each school district shall appropriate an amount that equals or exceeds the amount necessary to fund an adequate education for the pupils in that district. Notwithstanding any other provision of law, in the event a school district fails to appropriate at least the required amount, that amount shall be assessed and collected by the municipality, appropriated to the school district, and expended for educational purposes in accordance with paragraph IV without a vote of the school district.

II. On or before June 30 of each year, the individual with fiscal responsibility in each municipality shall submit a statement to the commissioner of revenue administration and the commissioner of education that the funds collected by the municipality pursuant to RSA 76:8 have been paid over to the school district or districts to be expended for educational purposes in accordance with paragraph IV. The statement shall include the following: ***"I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete."***

III. If a municipality uses any part of the funds collected pursuant to RSA 76:8 for non-educational purposes, the municipality shall pay to the school district an amount equal to the portion of funds used for such non-educational purposes.

IV. The funds collected by municipalities pursuant to RSA 76:8 and the funds received from the state pursuant to RSA 198:42 shall be appropriated by a school district only for current education expenses or transfers to reserves or trusts funds and shall not be used for any other purpose.

V. On or before June 30 of each year, the individual with fiscal responsibility in each school district shall submit a statement to the commissioner of revenue administration and the commissioner of education that an amount of money that equals the amount necessary to fund an adequate education for the pupils in that district was used in accordance with paragraph IV. The statement shall include the following: ***"I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete."***

198:45 Duties of the Department of Education and the Board of Education.

I. The department of education shall, on or before September 30 of each year, collect from the school districts final data concerning all aspects of student attendance for the school year ending June 30 of that year necessary to establish the average daily membership, average daily membership in residence, and weighted average daily membership in residence, including the municipality of residence for each pupil for that year. The department of education shall submit a report by December 31 to the speaker of the house of representatives and the senate president to be used for purposes of determination by the legislature of the appropriation to the education trust fund. A copy of such report shall, at the same time, be given to the department of revenue administration.

II. The board of education shall adopt rules pursuant to RSA 541-A necessary to the proper administration of this subdivision.

198:46 Submission of Data by School Districts. Each school district shall submit all attendance information required by the department of education under this subdivision on or before September 30 of each year.

Excess Education Property Tax Payment; Hardship Relief

198:47 Excess Education Property Tax Payment.

I. Except as provided in paragraph IV and RSA 198:48, VI, municipalities for which the education property tax exceeds the amount necessary to fund an adequate education determined by RSA 198:40 shall collect and remit such excess amount to the department of revenue administration on or before March 15 of the tax year in which the excess occurs.

II. The amount of such excess to be remitted shall not include any income derived from the investment of funds by the town treasurer under RSA 41:29. Any funds remaining after full payment of the excess tax required in paragraph I shall become available for unrestricted use by the municipality.



III. The commissioner of the department of revenue administration shall collect from the selectmen the excess tax and pay the excess tax over to the state treasurer for deposit in the education trust fund established by RSA 198:39.

IV. The commissioner of the department of revenue administration shall calculate the excess amount owed by each municipality pursuant to paragraph I for the tax year 1999. Notwithstanding any other provision of this section, the warrant issued pursuant to RSA 76:8 shall direct municipalities to only collect and remit to the department of revenue administration not more than the following percentages of excess amounts during the tax years 1999-2001:

- (a) In tax year 1999, 25 percent;
- (b) In tax year 2000, 50 percent; and
- (c) In tax year 2001, 75 percent.

198:48 Education Property Tax Hardship Relief.

I. As provided in this section, eligible claimants shall be granted hardship relief from the state education property tax due on their homesteads under RSA 76:3 for 4 tax years following the enactment of RSA 76:3.

II. The following definitions apply to this section:

(a) "Homestead" means the dwelling owned by a claimant or in the case of a multi-unit dwelling, the portion of the dwelling which is used as the claimant's principal residence. "Homestead" shall not include land and buildings taxed under RSA 79-A or land and buildings or the portion of land and buildings rented or used for commercial or industrial purposes. In this paragraph, a dwelling is "owned" by a claimant if the claimant is in possession of the dwelling as a vendee under a land contract. A dwelling may be "owned" by more than one person if they hold the property as joint tenants or tenants in common.

(b) "Household income" means the sum of the adjusted gross incomes for federal income tax purposes of the claimant and any member of the claimant's household who resides in the homestead for which a claim is made.

III. An eligible hardship relief claimant is a person who:

(a) Resides in a taxing jurisdiction that realizes in the first year after the effective date of the state education property tax in RSA 76:3 a net increase in education property taxes of greater than 20 percent, comparing the amount calculated for education property taxes for the property tax year ending March 31, 2000, to the amount of the school portion of the claimant's local property tax on the same property for the tax year ending March 31, 1999;

(b) Pays school property taxes on homestead property; and

(c) Has total household income of less than 75 percent of the median total household income of all New Hampshire residents in the year in which the claim for relief is made.

IV. The amount of hardship relief shall be calculated as follows:

(a) Start with the amount of education property taxes due on the claimant's homestead property for the tax year ending March 31, 2000;

(b) Subtract the amount of the school portion of the local property tax due on the same property for the tax year ending March 31, 1999; and

(c) Apply the appropriate percentage to the difference computed in subparagraph (b) as follows:

- (1) For the tax year ending March 31, 2000, the percentage is 50;
- (2) For the tax year ending March 31, 2001, the percentage is 25;
- (3) For the tax year ending March 31, 2002, the percentage is 10;
- (4) For the tax year ending March 31, 2003, the percentage is 10;

V. To receive hardship relief under this section, a claimant shall file a form with the claimant's final property tax payment and shall deduct the hardship amount calculated on the form from the amount due. The commissioner shall develop a form for taxpayers to claim hardship relief under the authority of RSA 198:49.

VI. The total amount of hardship claims received by a municipality shall be deducted from the amount collected and remitted to the department of revenue administration under RSA 198:47, I, and each municipality shall send to the department of revenue administration the claim forms it receives from claimants along with the excess property tax it remits under that section.

VII. On or before May 1 of each year, the commissioner of the department of revenue administration shall report to the governor, the treasurer, the speaker of the house of representatives, and the president of the senate the total amount of hardship claims. The treasurer shall deposit into the education trust fund established in RSA 198:39 the total amount of hardship claims reported by the commissioner of the department of revenue administration. The funds necessary for the deposit required by this paragraph are hereby appropriated and the governor is authorized to draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

198:49 Form. The commissioner shall approve and provide forms relative to the reporting and remitting of excess education property tax by the municipalities and relative to hardship claims.

#### Adequate Education and Education Financing Reform Commission

198:50 Adequate Education and Education Financing Reform Commission Established; Membership.

I. There is hereby established an adequate education and education financing reform commission which shall be composed of 19 members as follows:

(a) The chairpersons of the house education and house finance committees, appointed by the speaker of the house.

(b) The chairpersons of the senate education and senate finance committees, appointed by the president of the senate.

(c) Four members appointed by the governor, one of whom shall be an elementary or secondary special education teacher, one of whom shall be a primary teacher who does not teach special education, and one of whom shall be a member of the business community.

(d) The chancellor of the university system of New Hampshire or designee.

(e) The commissioner of the regional community-technical college system.

(f) One member from the state board of education, appointed by the chairperson of the state board of education.

(g) One member from a special education advocacy organization, appointed by such organization; and

(h) Seven members who shall be agreed to and jointly appointed by the governor, the president of the senate, and the speaker of the house consisting of the following:

(1) One local school board member, recommended by the New Hampshire School Boards Association.

(2) One school administrator, recommended by the New Hampshire School Administrators Association.

(3) One special education administrator at the elementary or secondary school level, recommended by the New Hampshire Association of Special Education Administrators.

(4) Two parents of school-age children, one of whom shall be the parent of a child with an educational disability.

(5) One member from the business community, who shall be associated with the School to Work Initiative.

(6) One school business official, recommended by the New Hampshire Association of School Business Officials.

II. The commission shall elect a chairperson from among its membership and shall form subcommittees necessary to perform its duties. The chairperson shall determine the frequency of meetings at its first meeting.

III. The members of the commission shall serve without compensation, provided that legislative members of the commission shall receive mileage at the legislative rate while attending to the duties of the commission, and provided that the parent members of the commission shall be reimbursed for travel expenses associated with their duties on the commission.

IV. In order to ensure that all students are provided an adequate education, the duties of the commission shall be as follows:

(a) Determine and recommend the costs of an adequate education for all students in New Hampshire by determining and calculating adjustments for individual school districts based on yearly inflation, cost of living variances, diseconomies of scale, transportation variability, demographics, including for school districts with a disproportionate number of students who are economically disadvantaged or have educational disabilities, and such other factors as deemed relevant.

(b) Determine and recommend the amount of state aid, including building aid, to be distributed to cities and towns based upon the cost of an adequate education as set forth in subparagraph (a) and the method for distributing the state aid.

(c) Recommend changes in policy and procedure in the areas of educational improvement and accountability.

(d) Recommend interim and permanent processes to ensure adequate planning and implementation at the local and state level of special education and educationally related services, including planning for and development, on an interagency basis, of local school based options for pupils who have been placed in alternative or separate schools who could be placed in appropriate less restrictive options if available.

V. The commission shall be divided into the following policy subcommittees: adequacy and cost, educational improvement and accountability, and special education funding.

VI. The commission shall report its findings and recommendations no later than December 1, 2000. The report shall include, for each recommendation, proposed implementation schedules with timelines, specific steps, agencies and persons responsible, and resources needed. Where feasible, all plans, measures and initiatives shall be proposed as legislation or regulation so that they will have the force of law. All recommendations and plans shall be designed to be fully implemented no later than September 1, 2004.

VII. The department of justice, department of revenue administration, department of education, and department of health and human services shall provide the commission with assistance.

27 Appropriation. The sum of \$150,000 for the fiscal year ending June 30, 2000, is hereby appropriated for the purposes of the commission established in RSA 198:50 as inserted by section 26 of this act. This sum shall be nonlapsing until June 30, 2001. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.



28 New Subparagraph; Special Education; Catastrophic Aid Payments. Amend RSA 186-C:18, III by inserting after subparagraph (c) the following new subparagraph:

(d) For each fiscal year beginning with the fiscal year ending June 30, 2000, 0.5 percent of the total statewide special education costs as defined in RSA 198:38, IX shall be appropriated from the education trust fund established in RSA 198:39 to the department of education to assist those school districts which, under rules adopted by the state board of education, qualify for emergency assistance in meeting special education catastrophic costs pursuant to this section.

29 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:7, I to read as follows:

I. If a cooperative school district was organized prior to July 1, 1963, during the first 5 years after the formation of a cooperative school district each preexisting district shall pay its share of all capital outlay costs and *all* operational costs *in excess of the amount determined necessary to provide an adequate education under RSA 198:40* in accordance with either one of the following formulas as determined by a majority vote of the cooperative district meeting:

30 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:14, I(b) to read as follow:

(b) The commissioner of revenue administration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum, in accordance with RSA 21-J:35, which may be used as a setoff against the amount appropriated when it appears to the commissioner of revenue administration such adjustment is in the best public interest. *The commissioner of revenue administration shall apply the total amount of all adequate education grants received pursuant to RSA 198:42.*

31 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:18, III(e) to read as follows:

(e) The method of apportioning ~~the~~ *all* operating expenses *in excess of the amount determined necessary to provide an adequate education under RSA 198:40*, of the cooperative school district among the several preexisting districts and the time and manner of payment of such shares. Home education pupils who do not receive services from the cooperative school district, except an evaluation pursuant to RSA 193-A:6, II, shall not be included in the average daily membership relative to apportionment formulas.

32 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:18, IX to read as follows:

IX. The organization meeting of a cooperative school district shall be called to order by the chairperson of the cooperative school district planning board, or by the clerk-treasurer thereof, who shall serve as temporary chairperson for the first order of business which shall be the election of a moderator and of a temporary clerk, by ballot, who shall be qualified voters of the district. From and after the issuance of the certificate of formation by the board to the date of operating responsibility of the cooperative school district, such district shall have all the authority and powers of a regular school district for the purposes of incurring indebtedness, for the construction of school facilities and for such other functions as are necessary to obtain proper facilities for a complete program of education. When necessary in such interim, the school board of the cooperative school district is authorized to prepare a budget and call a special meeting of the voters of the district, which meeting shall have the same authority as an annual meeting, for the purpose of adopting

the budget, making necessary appropriations, and borrowing money. Whenever the organization meeting is held on or before April 20 in any calendar year, no annual meeting need be held in such calendar year. Sums of money raised and appropriated at the organization meeting or any interim meeting prior to the first annual meeting shall be forthwith certified to the commissioner of revenue administration and the state department of education upon blanks prescribed and provided by the commissioner of revenue administration for the purpose, together with a certificate of estimated revenues, so far as known, and such other information as the commissioner of revenue administration may require. The commissioner of revenue administration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum which may be used as a setoff against the amount appropriated when it appears to the commissioner such adjustment is in the best public interest. ***The commissioner of revenue administration shall apply the total amount of all adequate education grants received pursuant to RSA 198:40 as a setoff against the amount appropriated.*** The commissioner of revenue administration shall certify to the state department of education the total amount of taxes to be raised for said cooperative school district and the state department of education shall determine the proportional share of said taxes to be borne by each preexisting school district and notify the commissioner of revenue administration of its determination. Upon certification by the commissioner of revenue administration the selectmen of each town shall seasonably assess the taxes as provided by law. The selectmen shall pay over to the treasurer of the cooperative district such portion of the sums so raised as may reasonably be required according to a schedule of payments needed for the year as prepared by the treasurer and approved by the cooperative school board, but no such payment shall be greater in percentage to the total sum to be raised by one local district than that of any other local district comprising such cooperative school district.

33 Reference Change. Amend RSA 193:1, I(c) to read as follows:

(c) The relevant school district superintendent has excused a child from attendance because the child is physically or mentally unable to attend school, or has been temporarily excused upon the request of the parent for purposes agreed upon by the school authorities and the parent. Such excused absences shall not be permitted if they cause a serious adverse effect upon the student's educational progress. Students excused for such temporary absences may be claimed as full-time pupils for purposes of calculating state aid under RSA 186-C:18 and ***[RSA 198:27-37] adequate education grants under RSA 198:41.***

34 Reimbursement Anticipation Notes; Version Effective Until July 1, 1999. Amend RSA 198:20-d to read as follows:

198:20-d Reimbursement Anticipation Notes. Notwithstanding any other provision of law to the contrary, a school district may incur debt in anticipation of reimbursement under RSA 186-C:18 ***and under RSA 198:42.*** The governing body, after receiving authorization for borrowing from the legislative body, may elect to recognize the proceeds of the borrowing as revenue for property tax rate setting purposes by providing written notification, prior to September 1, to the commissioner of the department of revenue administration stating the specific amount of borrowing to be recognized as revenue.

35 Reimbursement Anticipation Notes; July 1, 1999 Version. Amend RSA 198:20-d to read as follows:

198:20-d Reimbursement Anticipation Notes. Notwithstanding any other provision of law to the contrary, a school district may incur debt in anticipation of reimbursement under RSA 186-C:18 **and under RSA 198:42**. The governing body, after notice and public hearing, may elect to borrow such funds and to recognize the proceeds of the borrowing as revenue for property tax rate setting purposes by providing written notification to the commissioner of the department of revenue administration stating the specific amount of borrowing to be recognized as revenue. Any borrowing under this section shall be exempt from the provisions of RSA 33, relative to debt limits.

36 Sweepstakes. RSA 284:21-j is repealed and reenacted to read as follows:

284:21-j Establishment. The state treasurer shall credit all moneys received from the sweepstakes commission, and interest received on such moneys, to a special fund from which the treasurer shall pay all expenses of the commission incident to the administration of this subdivision and RSA 287-E. Any balance left in such fund after such expenses are paid shall be deposited in the education trust fund established under RSA 198:39.

37 Transition. As of July 1, 1999, all funds, from any source derived, which would be distributed as foundation aid shall be deposited in the education trust fund under RSA 198:39, including the \$62,000,000 appropriated under 1998, 389:16, II.

38 Removing Reference to Foundation Aid. Amend RSA 198:21, V to read as follows:

V. No pupil counted by any school district for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be ~~[included in average daily membership for the purposes of foundation aid or]~~ counted for the purposes of grants pursuant to RSA 198:22.

39 Removing Reference to Foundation Aid. Amend RSA 198:22, V to read as follows:

V. No pupil counted by any school for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be ~~[included in average daily membership for the purposes of foundation aid or]~~ counted for the purpose of grants pursuant to RSA 198:21.

40 Payment in Lieu of Taxes. Amend RSA 227-H:17 to read as follows:

227-H:17 Payment in Lieu of Taxes. The commissioner of revenue administration shall adopt rules, pursuant to RSA 541-A, relative to forms for application to the commissioner of revenue administration for payment for lost taxes. ~~[In any year in which no state tax is levied,]~~ Any town in which national forest lands and land held by the state for operation and development as state forestland, as defined by the department for the purposes of this section, are situated, whether acquired by gift, devise, purchase, or in any other manner, may apply, by its selectmen, to the commissioner of revenue administration on forms provided by the commissioner, annually before September 1, for the payment of an amount not exceeding the taxes for all purposes which such town might have received from taxes on such lands in such year had such lands been taxable. In the event that the amount appropriated in any biennium shall be insufficient for the purposes under this section, then the towns entitled to benefits under this section shall be reimbursed proportionately, unless otherwise subsequently ordered by the legislature.



41 Special Transition Rules. The following special transition rules shall apply to the implementation of the uniform education property tax established by sections 6-44 of this act in the first fiscal year following enactment:

I. "Total equalized value" as defined in RSA 21-J:3, XIII shall be based upon the amounts reported for the 1997 tax year as determined by the commissioner of revenue administration pursuant to RSA 21-J:3, XIII.

II. For the school year 1999/2000, the adequate education grant determined in RSA 198:41 shall be distributed to each municipality's school district or districts from the education trust fund in 4 payments as follows:

(a) On July 1, 1999, and September 1, 1999, 1/8 the total adequate education grant;

(b) On January 1, 2000, and April 1, 2000, 3/8 the total adequate education grant. The commissioner of revenue administration shall certify the amount of each grant to the state treasurer and direct the payment thereof to the municipality's school district or districts. When a payment of a grant is made to a school district, the municipality on whose behalf the payment is made, shall receive notification from the state treasurer of the amount of the payment made to its school district or districts.

III. Notwithstanding any other provision of law, the commissioner of revenue administration, for the April 1, 1999 tax year, shall issue the warrants required by RSA 76:8 on or before 30 days after the effective date of this act.

IV. Notwithstanding any other provision of law, the commissioner of revenue administration shall determine the amount of the adequate education grant for each municipality pursuant to RSA 198:41 for the 1999/2000 school year on or before 30 days after the effective date of this act.

42 Special Provision for Foundation Aid. Notwithstanding the repeal pursuant to section 44 of this act of RSA 198:27-37, relative to foundation aid and alternative foundation aid, the payment of foundation aid to be made in April 1999 pursuant to RSA 198:31 before such section is repealed, shall be calculated by the department of education and distributed to the recipients as if such repeal had not occurred.

43 Severability. If any provision of this uniform education property tax enacted in sections 6-44 of this act or the application thereof to any person or circumstance is deemed invalid, the invalidity does not affect the other provisions or applications of this act which can be given effect without the invalid provisions or applications and to this end the provisions of this act are severable.

44 Repeal. The following are repealed:

I. RSA 78:20, relative to the applicability of the tobacco tax.

II. RSA 78-B:10-a, relative to the real estate transfer questionnaire.

III. RSA 83-D, relative to the tax on nuclear station property.

IV. RSA 21-J:3, XXIII, relative to the commissioner of revenue administration's duty to determine local per capita income for purposes of foundation aid.

V. RSA 21-J:13, XI, relative to the form and content of the real estate transfer questionnaire.

VI. RSA 194-B:11, VIII, relative to foundation aid in relation to charter and open enrollment schools.

VII. RSA 198:1-3, relative to required annual district property taxes.

VIII. RSA 198:15-i-RSA 198:15-q, relative to kindergarten incentive program, kindergarten aid and alternative kindergarten programs.

IX. RSA 198:21, V, relative to the applicability of foundation aid and child benefit service grant recipients in the calculation of average daily membership.

X. RSA 198:22, V, relative to the applicability of foundation aid and dual enrollment grant recipients in the calculation of average daily membership.

XI. RSA 198:27-37, relative to foundation aid and alternative foundation aid.

45 Business Profits Tax; Rate Increased. Amend RSA 77-A:2 to read as follows:

77-A:2 Imposition of Tax. A tax is imposed at the rate of [7] 8 percent upon the taxable business profits of every business organization.

46 Business Enterprise Tax; Rate Increased; Super Majority to Increase Tax Deleted. Amend RSA 77-E:2 to read as follows:

77-E:2 Imposition of Tax. A tax is imposed at the rate of [~~1/4~~] 1/2 of one percent upon the taxable enterprise value tax base of every business enterprise. [~~A 2/3 majority of those present and voting of each house of the general court shall be necessary to increase the tax rate under this section.~~]

47 Definitions; Meals and Rooms Tax; Operator. RSA 78-A:3, IV is repealed and reenacted to read as follows:

IV. "Operator" means any person operating a hotel, charging for a taxable meal, receiving gross rental receipts, or receiving admission charges or dues, whether as owner or proprietor or lessee, sublessee, mortgagee, licensee, or otherwise.

48 New Paragraphs; Meals and Rooms Tax; Motor Vehicle Rental; Definitions. Amend RSA 78-A:3 by inserting after paragraph XIII the following new paragraphs:

XIV. "Motor vehicle" means a self-propelled vehicle designed to transport persons or property on a public highway, including a van or jeep. The term does not include the following:

- (a) A device moved only by human power;
- (b) A device used exclusively on stationary rails or tracks;
- (c) Road-building machinery; or
- (d) A mobile office.

XV. "Rental agreement" means an agreement by the owner of a motor vehicle to provide, for not longer than 180 days, the exclusive use of that motor vehicle to another for consideration.

XVI. "Gross rental receipts" means value received or promised as consideration to the owner of a motor vehicle for rental of the vehicle, but does not include:

- (a) Separately stated charges for insurance;
- (b) Charges for damages to the motor vehicle occurring during the rental agreement period;
- (c) Separately stated charges for motor fuel sold by the owner of the motor vehicle.

XVII. "Owner of a motor vehicle" means a person named in the certificate of title as the owner of the vehicle or a person who has the exclusive use of a motor vehicle by reason of rental and holds the vehicle for re-rental.

XVIII. "Department" means the department of revenue administration.

XIX. "Renter" means any person who, for consideration paid to another, is provided a vehicle under a rental agreement.

XX. "Admission charge" means the amount paid for the right or privilege to have access to a place or location where amusement, entertainment or recreation is provided, exclusive of any charges for instruction.

Places of amusement, entertainment or recreation include, but are not limited to, theaters, motion picture shows, auditoriums where lectures and concerts are given, amusement parks, race tracks, ski resorts, zoos, dance halls, ball parks, golf courses, tennis courts, gymnasiums, health and fitness clubs, skating rinks, auto shows, boat shows, camping shows, home shows, dog shows and antique shows.

XXI. "Dues" shall include assessment charges to members of athletic clubs irrespective of the purpose for which such charges are made and any charges for sporting privileges for any period of more than 6 days but not including charges made for instruction.

XXII. "Athletic club" means any golf course, gymnasium, health or fitness club, tennis club, racquet club, or country club for which members are assessed dues, and members of such club enjoy the right or privilege to have access to club sporting or recreational facilities, whether or not additional charges are assessed for such access.

XXIII. "Participant" means any person who, for consideration paid to another, is provided access to a place or location where amusement, entertainment, or recreation is provided including, but not limited to, members of athletic clubs.

49 Meals and Rooms Tax; Licenses Required; Penalty. Amend RSA 78-A:4 to read as follows:

78-A:4 Licenses Required; Penalty.

I. Each operator shall register with the department the name and address of each place of business within the state where ~~he~~ *it* operates a hotel ~~or~~, sells taxable meals, ***charges dues or admission charges, or rents motor vehicles***. The operator shall pay \$5 for each registration, upon receipt of which the department shall issue a license for each place in such form as it determines, attesting that the registration has been made. The license expires on June 30 in each odd-numbered year unless sooner revoked or suspended by the department. The license shall be conspicuously posted in a public area upon the premises to which it relates.

II. No person shall engage in serving taxable meals ~~or~~, renting rooms, ***charging admission charges or dues, or renting motor vehicles*** without first obtaining the license required by this section. The license is nonassignable and cannot be transferred. Any person who fails to register or obtain a license as provided in this section shall be subject to the penalty provisions of RSA 21-J:39.

50 New Paragraphs; Tax Imposed on Motor Vehicle Rentals; Admission Charges and Dues. Amend RSA 78-A:6 by inserting after paragraph II the following new paragraphs:

II-a. A tax of 8 percent is imposed upon the gross rental receipts of each rental.

II-b. A tax of 8 percent is imposed on dues and admission charges.

51 Meals and Rooms Tax; Collection of Tax. Amend RSA 78-A:7, I to read as follows:

I. The operator shall either state the amount of the tax to each occupant ~~or~~, purchaser of a meal, ***renter, or participant***, or state that the tax is included in the price of the occupancy ~~or~~, meal ***gross rental receipts received, or admission charges or dues***. The operator shall demand and collect the tax from the occupant ~~or~~, purchaser, ***renter, or participant***. The occupant ~~or~~, purchaser, ***renter, or participant*** shall pay the tax to the operator. If the tax is included in the price of the meal ~~or~~ occupancy, ***gross rental receipts received, or admission charges or dues***, upon request the operator shall state to the purchaser ~~or~~, occupant, ***renter, or participant*** the amount of the tax.



52 Meals and Rooms Tax; Collection of Tax. Amend RSA 78-A:7, IV to read as follows:

IV. In lieu of keeping detailed records of taxes collected, and in lieu of payment of the taxes collected under this chapter, an operator may, in writing, elect to compute the amount of taxes due at [7] **8** percent of the total taxable rent [or], charge for meals, **gross rental receipts, or admission charges or dues** received by [him] **it**, or both, exclusive of the taxes collected on such rents [and], charges, **gross rental receipts, and admission charges and dues**. If this election is made, the operator may not change the method of computing taxes without the written consent of the department. Any balance of the tax remaining in possession of the operator may be retained by [him] **it**.

53 Tobacco Settlement Funds. Beginning with the fiscal year ending June 30, 1999, \$20,000,000 of funds received each fiscal year by the state of New Hampshire as a result of the settlement in 1998 of litigation against tobacco companies shall be deposited in the education trust fund established in RSA 198:39. The governor is authorized to draw a warrant for said sums out of funds received by the state from settlement of the tobacco litigation.

54 Statement of Purpose. In adopting sections 55-61 of this act, the general court finds that:

I. The economic vitality of New Hampshire's grand hotels is threatened by the creation of large gaming and resort complexes in southern New England and Canada. The grand hotels will be further impacted if the proposed expansion of gaming occurs in the southern part of the state. New Hampshire's grand hotels are an inherent part of our state's traditions, character and quality of life. Their preservation and continued existence is of fundamental importance to the economic vitality, tourism trade, hospitality, and educational opportunities of the state and to the preservation and enhancement of employment in the communities in which they exist. Therefore, the grand hotels must be given an opportunity to position themselves in a changing and increasingly competitive environment.

II. New Hampshire's grand hotels provide substantial and positive impacts on the economies of the local communities in which they are located, as well as on that of the state of New Hampshire. The grand hotels pay substantial local property taxes, fees, and rooms and meals taxes and provide jobs to thousands of New Hampshire residents. The grand hotels are an important part of the tourism industry.

III. The pari-mutuel industry provides substantial and positive impacts on the economies of the local communities in which racetracks are located, as well as that of the state of New Hampshire. The pari-mutuel facilities pay substantial local property taxes and fees and provide jobs to thousands of New Hampshire residents. The pari-mutuel industry is also a significant part of tourism in the state.

IV. The pari-mutuel industry and the grand hotels face substantial competition from various sources. Racetracks in other jurisdictions are assessed lower taxes and receive substantial incentives to support this industry. Large resort hotels in other states have access to state-created amenities to attract year-round guests.

55 New Chapter; Electronic Games of Chance. Amend RSA by inserting after chapter 284 the following new chapter:

#### CHAPTER 284-A

##### ELECTRONIC GAMES OF CHANCE

284-A:1 Definitions. In this chapter:

I. "Electronic games of chance machine" means an electronic, mechanical, or computerized machine licensed by the gaming oversight authority which, upon the insertion of cash, tokens or the payment of any consideration whatsoever, is available to be played where, by chance or skill, or both, the player may receive cash, tokens or any consideration whatsoever. Electronic games of chance machines include, but are not limited to, slot machines, video poker machines, and video lottery machines. Electronic games of chance machines do not include any redemption slot machines and redemption poker machines as defined in RSA 647 or video poker machines or other similar machines used for amusement purposes only and which do not disburse cash or tokens.

II. "Gaming oversight authority" means the authority established by RSA 284-A:2.

III. "Grand hotel" means a facility which operated with a minimum of 195 rental units in a single structure available to the public as of July 1, 1998, has restaurant facilities, restrooms, bathing facilities, public telephones, an attached 18-hole golf course in common ownership with the grand hotel facility and adequate parking for patrons.

IV. "Grand hotel applicant" means a person who owns and operates a grand hotel.

V. "Grand hotel licensee location" means the sole location within the grand hotel where electronic games of chance machines are located, which location must have existed as of January 1, 1998.

VI. "Net machine income" means all cash or other consideration utilized to play an electronic games of chance machine, less all cash or other consideration paid to players of electronic games of chance machines as winnings.

VII. "Operator applicant" means the entity in which a pari-mutuel licensee, grand hotel or resort hotel applicant will participate and apply for an operator's license to operate electronic games of chance machines at the pari-mutuel, grand hotel, or resort hotel licensee location, as applicable.

VIII. "Operator's license" means the license issued by the gaming oversight authority to an operator licensee which allows the operator licensee to possess, conduct and operate electronic games of chance machines in accordance with this chapter.

IX. "Operator licensee" means a pari-mutuel licensee, grand hotel applicant, resort hotel applicant or the operator applicant who is issued a license by the gaming oversight authority to operate electronic games of chance machines pursuant to this chapter.

X. "Pari-mutuel commission" means the New Hampshire pari-mutuel commission as established in RSA 284:6-a.

XI. "Pari-mutuel licensee" means an entity licensed and authorized to conduct either:

(a) Live horse racing as provided in RSA 284:16 for at least the number of days as required in RSA 284:22-a, II(a)(3) as determined by the pari-mutuel commission; or

(b) Live dog racing as provided in RSA 284:16-a for at least the number of days as required in RSA 284:22-a, II(a)(3) as determined by the pari-mutuel commission.

XII. "Pari-mutuel licensee location" means the facility at which the pari-mutuel licensee is located and where the pari-mutuel licensee conducts live thoroughbred horse racing or live dog racing as of January 1, 1998 and any real estate in which the pari-mutuel licensee has an interest as of January 1, 1998 which is adjacent to the real estate on

which the pari-mutuel licensee conducts live thoroughbred horse racing or live dog racing; provided that the pari-mutuel licensee location shall include any structures that may be constructed at such location after January 1, 1998.

XIII. "Resort hotel" means a facility which operated with a minimum of 150 rental units in a single structure available to the public as of July 1, 1998, has restaurant facilities, restrooms, bathing facilities, public telephones and adequate parking for patrons in compliance with local zoning ordinances.

XIV. "Resort hotel applicant" means a person who owns and operates a resort hotel.

XV. "Resort hotel licensee location" means the sole location within the resort hotel where electronic games of chance machines are located, which location must have existed as of January 1, 1998.

XVI. "Sweepstakes commission" means the New Hampshire sweepstakes commission as established by RSA 284:21-a.

XVII. "Technology provider" means any person or entity which designs, manufactures, installs, distributes, or supplies electronic games of chance machines for sale or lease to the sweepstakes commission, and which are for use by an operator licensee for conducting electronic games of chance in accordance with this chapter.

XVIII. "Token" means the coin, which is not legal tender, sold by a cashier in a face amount equal to the cash paid by a player for the sole purpose of playing an electronic games of chance machine at a pari-mutuel licensee location or paid to a player of an electronic games of chance machine, which can be exchanged for cash at the pari-mutuel licensee location where the electronic games of chance machine is located.

#### 284-A:2 Gaming Oversight Authority.

I. There is hereby established the New Hampshire gaming oversight authority. The gaming oversight authority shall consist of the attorney general, the commissioner of safety, and the commissioner of revenue administration or their respective designees. The attorney general or the designee of the attorney general shall serve as the chairperson of the gaming oversight authority.

II. The gaming oversight authority shall not grant a license to an eligible grand hotel applicant or resort hotel applicant that does not agree to provide the minimum distribution of net machine income as provided in RSA 284-A:12. A grand hotel applicant or resort hotel applicant may increase its distribution of net machine income as part of the application to the gaming oversight authority.

III. No license shall be issued to any person under this chapter without the prior approval of the gaming oversight authority. The gaming oversight authority shall issue licenses only after completion of the investigations set forth in this chapter and the recommendation to issue such license from the pari-mutuel commission or the sweepstakes commission, as the case may be. If the pari-mutuel commission or the sweepstakes commission does not recommend that a license be issued to an applicant, such applicant may apply to the gaming oversight authority for such license.

IV. A grand hotel applicant or a resort hotel applicant shall apply directly to the gaming oversight authority.

V. In addition to the responsibilities set forth in RSA 284-A:2, II, the gaming oversight authority shall have general responsibility for the implementation of this chapter and shall adopt rules under RSA 541-A relative to:



(a) Hearing and deciding promptly and in reasonable order all license applications or recommendations for the suspension or revocation of any license issued under this chapter.

(b) Conducting all investigations required under this chapter with regard to the application of any applicant for a license.

(c) Notifying the pari-mutuel commission that it has received an application by a pari-mutuel licensee or an operator applicant for issuance of an operator license at a pari-mutuel licensee location and requiring the pari-mutuel commission to provide the gaming oversight authority with all records of the pari-mutuel commission regarding the licensing of the pari-mutuel licensee.

(d) Conducting hearings pertaining to civil violations of this chapter or rules under the provisions of this chapter and collecting all penalties under the provisions of this chapter.

(e) Establishing standards and a reasonable fee structure for the licensing and renewal of licenses for operators.

(f) Establishing standards and a reasonable fee structure for the licensing and renewal of licenses for technology providers.

(g) Establishing standards and a reasonable fee structure for the licensing and renewal of licenses for electronic games of chance employees.

(h) Establishing technical standards for approval of electronic games of chance machines, including mechanical and electrical reliability and security against tampering, as it may deem necessary to protect the public from fraud or deception and to ensure the integrity of their operation.

(i) Establishing criteria for licensing under RSA 284-A:8.

(j) Establishing standards for reviewing, altering, removing, constructing or enlarging any structure at the pari-mutuel licensee location, grand hotel licensee location, or resort hotel licensee location.

(k) Such other rules as may be necessary to implement this chapter.

VI. The gaming oversight authority shall have the authority to issue subpoenas and compel the attendance of witnesses, to administer oaths, and require testimony of witnesses under oath.

VII. Pending the adoption of rules under RSA 541-A, and notwithstanding RSA 541-A:18, the gaming oversight authority shall adopt interim rules after public hearing and within 30 days after enactment of this chapter. Such interim rules shall automatically expire upon the adoption of rules under RSA 541-A.

VIII. No later than March 31 in each calendar year, the gaming oversight authority shall provide a report to the fiscal committee of the general court, regarding the operation of electronic games of chance machines. Such report shall include any recommendations for legislation.

IX. With regard to minutes and records of the gaming oversight authority:

(a) The gaming oversight authority shall cause to be made and kept a record of all proceedings of public meetings of the gaming oversight authority. A verbatim transcript of those proceedings shall be prepared by the gaming oversight authority upon the request of any member of the authority or upon the request of any other person and the payment by that person of the costs of preparation. A copy of a transcript shall be made available to any person upon request and payment of the costs of preparing the copy.

(b) The gaming oversight authority shall keep and maintain a list of all applicants for licenses it receives under this chapter together with a record of all actions taken with respect to such applicants. A file and record of the actions by the gaming oversight authority shall be open to

public inspection provided, however, that the information regarding any applicant whose license or registration has been denied, revoked, or not renewed shall be removed from such list after 5 years from the date of such action.

(c) The gaming oversight authority shall maintain such other files and records as the gaming oversight authority determines is necessary.

(d) All information and data required by the gaming oversight authority to be furnished to it, or which may otherwise be obtained, shall be considered to be confidential and shall not be revealed in whole or in part except in the course of the necessary administration of this chapter, or upon the lawful order of a court of competent jurisdiction, or, with the approval of the attorney general, to a duly authorized law enforcement agency.

(e) All information and data pertaining to an applicant's criminal record, family, and background furnished to or obtained by the gaming oversight authority from any source shall be considered confidential and shall be withheld in whole or in part. Such information shall be released upon the lawful order of a court of competent jurisdiction or to a duly authorized law enforcement agency.

(f) Notice of the contents of any information or data released, except to a duly authorized law enforcement agency pursuant to subparagraphs (d) or (e) of this paragraph, shall be given to any applicant, registrant, or licensee in a manner prescribed by the rules adopted by the gaming oversight authority.

X. The gaming oversight authority may from time to time contract for and procure on a fee or independent contracting basis such financial, economic, or security consultants and any other technical and professional services as the authority deems necessary for the discharge of its duties. The cost shall be a charge against the general fund.

#### 284-A:3 Duties of the Pari-mutuel Commission.

##### I. The pari-mutuel commission shall:

(a) Provide to the gaming oversight authority all records pertaining to the licensing of a pari-mutuel licensee under RSA 284 within 30 days after the pari-mutuel commission receives notice from the gaming oversight authority pursuant to RSA 284-A:2, V(c).

(b) Hear and make recommendations promptly but no later than 60 days after receipt of notice from the gaming oversight authority pursuant to RSA 284-A:2, V(c) to the gaming oversight authority and in reasonable order all license applications for a license under RSA 284-A:8, II.

II. The pari-mutuel commission shall make its recommendation to the gaming oversight authority in writing and after hearing. All hearings shall be conducted in accordance with the rules adopted by the pari-mutuel commission under RSA 284 and subject to RSA 284-A:3, III.

III. With regard to minutes and records of the pari-mutuel commission:

(a) The pari-mutuel commission shall cause to be made and kept a record of all proceedings of public meetings of the pari-mutuel commission pursuant to this chapter. A verbatim transcript of those proceedings shall be prepared by the pari-mutuel commission upon the request of any commissioner or upon the request of any other person and the payment by that person of the costs of preparation. A copy of a transcript shall be made available to any person upon request and payment of the costs of preparing the copy.

(b) The pari-mutuel commission shall keep and maintain a list of all notices it receives under RSA 284-A, together with a record of all actions taken with respect to such notices. A file and record of the pari-

mutuel commission's actions shall be open to public inspection provided, however, that the information regarding any applicant whose license or registration has been denied, revoked, or not renewed shall be removed from such list after 5 years from the date of such action.

(c) The pari-mutuel commission shall maintain such other files and records as the pari-mutuel commission determines is necessary.

(d) All information and data required by the pari-mutuel commission to be furnished to it, or which may otherwise be obtained, shall be considered to be confidential and shall not be revealed in whole or in part except in the course of the necessary administration of this chapter, or upon the lawful order of a court of competent jurisdiction, or with the approval of the attorney general, to a duly authorized law enforcement agency.

(e) All information and data pertaining to an applicant's criminal record, family, and background furnished to or obtained by the pari-mutuel commission from any source shall be considered confidential and shall be withheld in whole or in part. Such information shall be released upon the lawful order of a court of competent jurisdiction or to a duly authorized law enforcement agency.

(f) Notice of the contents of any information or data released, except to a duly authorized law enforcement agency pursuant to subparagraphs (d) or (e) of this paragraph, shall be given to any applicant, registrant, or licensee in a manner prescribed by the rules and regulations adopted by the pari-mutuel commission.

#### 284-A:4 Duties of the Sweepstakes Commission.

##### I. The sweepstakes commission shall:

(a) Hear and make recommendations promptly to the gaming oversight authority and in reasonable order all license applications for technology providers.

(b) Collect all license fees imposed upon any applicant and all taxes imposed by this chapter.

(c) Adopt, pursuant to RSA 541-A, such rules as may be necessary to implement this chapter.

(d) Certify net machine income by inspecting records, conducting audits, having its agents on site, or by any other reasonable means.

(e) Establish a central computer system located at the office of the sweepstakes commission linking all electronic games of chance machines to a central mainframe located at the office of the sweepstakes commission to insure control over electronic games of chance. The sweepstakes commission shall establish a bid procedure for such contracts.

(f) Enter into lease agreements with technology providers to provide electronic games of chance machines to operator licensees. These lease agreements shall provide that each technology provider shall supply the quantity and quality of electronic games of chance machines as determined by an operator licensee in a timely and efficient manner. Each agreement shall also provide that the technology provider shall provide all maintenance and service of its electronic games of chance machines at no additional charge or fee to the state or the operator licensees.

(g) Establish technical standards for approval of electronic games of chance machines, including mechanical and electrical reliability and security against tampering, as it may deem necessary to protect the public from fraud or deception and to ensure the integrity of their operation.

(h) Subject to the provisions of RSA 284-A:8, IX, determine from time to time the number of electronic games of chance machines that any operator licensee may operate.



II. The sweepstakes commission shall have the authority to issue subpoenas and compel the attendance of witnesses, to administer oaths and to require testimony under oath.

III. No later than March 1 in each calendar year, the sweepstakes commission shall provide a report to the gaming oversight authority regarding the generation of revenues of electronic games of chance machines by pari-mutuel licensees.

IV. With regard to minutes and records of the sweepstakes commission:

(a) The sweepstakes commission shall cause to be made and kept a record of all proceedings held at public meetings of the sweepstakes commission. A verbatim transcript of those proceedings shall be prepared by the sweepstakes commission upon the request of any commissioner or upon the request of any other person and the payment by that person of the costs of preparation. A copy of the transcript shall be made available to any person upon request and payment of the costs of preparing the copy.

(b) The sweepstakes commission shall keep and maintain a list of all notices for licenses as technology providers under RSA 284-A, together with a record of all actions taken with respect to such applicants. A file and record of the actions by the sweepstakes commission shall be open to public inspection provided, however, that the information regarding any applicant whose license or registration has been denied, revoked, or not renewed shall be removed from such list after 5 years from the date of such action.

(c) The sweepstakes commission shall maintain such other files and records as the sweepstakes commission determines is necessary.

(d) All information and data required by the commission to be furnished to it, or which may otherwise be obtained, shall be considered to be confidential and shall not be revealed in whole or in part except in the course of the necessary administration of this chapter, or upon the lawful order of a court of competent jurisdiction, or with the approval of the attorney general, to a duly authorized law enforcement agency.

(e) All information and data pertaining to an applicant's criminal record, family, and background furnished to or obtained by the sweepstakes commission from any source shall be considered confidential and shall be withheld in whole or in part. Such information shall be released upon the lawful order of a court of competent jurisdiction, or with the approval of the attorney general, to a duly authorized law enforcement agency.

(f) Notice of the contents of any information or data released, except to a duly authorized law enforcement agency pursuant to subparagraphs (d) or (e) of this paragraph, shall be given to any applicant, registrant, or licensee in a manner prescribed by the rules adopted by the sweepstakes commission.

V. Pending the adoption of rules under RSA 541-A, and notwithstanding RSA 541-A:18, the sweepstakes commission shall adopt interim rules after public hearing and within 30 days after enactment of this chapter. Such interim rules shall automatically expire in accordance with RSA 541-A:19.

#### 284-A:5 Restrictions on Employment.

I. No person who has held an interest in or been employed by the holder of a pari-mutuel license or an operator's license or has held an interest in or been employed by a grand hotel or resort hotel shall be employed by the gaming oversight authority, the pari-mutuel commission, the sweepstakes commission, or gaming enforcement division for

2 years from the expiration of such interest or employment. Excluded from this prohibition shall be employees of a pari-mutuel licensee who are employed on an emergency or temporary basis by the pari-mutuel commission for services in connection with a live race or live race meet.

II. No person who holds an interest in or is employed by the holder of a pari-mutuel license or an operator's license, or holds an interest in or is employed by a grand hotel or resort hotel, shall be employed by the gaming oversight authority, the pari-mutuel commission, the sweepstakes commission, or gaming enforcement division.

III. No employee of the gaming oversight authority, the pari-mutuel commission, the sweepstakes commission, or gaming enforcement division shall play an electronic games of chance machine.

IV. No employee of the gaming oversight authority, the pari-mutuel commission, the sweepstakes commission, or gaming enforcement division shall directly or indirectly pay or contribute money or things of value to:

(a) Any candidate for nomination or election to any public office in this state.

(b) Any political party or any committee of any political party in this state.

(c) Any group, committee or association organized in support of any such candidate or political party.

V. No person who was employed by the gaming oversight authority, the pari-mutuel commission, the sweepstakes commission, or gaming enforcement division shall hold an interest in or be employed by the holder of a pari-mutuel license or an operator's license, or hold an interest in or be employed by a grand hotel or resort hotel, for a period of 2 years from the termination of employment by the gaming oversight authority, pari-mutuel commission, the sweepstakes commission, or gaming enforcement division.

#### 284-A:6 Authorization for Electronic Games of Chance.

I. A pari-mutuel licensee, grand hotel applicant, or resort hotel applicant shall be authorized to install, operate and conduct electronic games of chance at its pari-mutuel licensee location, grand hotel licensee location, or resort hotel licensee location, subject to the provisions of this chapter.

II. A pari-mutuel licensee, grant hotel applicant, or resort hotel applicant may enter into one or more agreements to manage or participate in the operation of electronic games of chance at its pari-mutuel licensee location, grant hotel licensee location, or resort hotel licensee location; such operator applicant must be licensed under this chapter.

#### 284-A:7 New Hampshire Electronic Gaming Areas.

I. There are established 2 New Hampshire electronic gaming areas as follows:

(a) The "White Mountain Tourist Gaming Area" which shall include those Carroll County municipalities and unincorporated towns of Chatham, Jackson, Hart's Location, Bartlett, Hale's Location, Conway, Albany and the Grafton County municipalities and unincorporated towns of Littleton, Bethlehem, Monroe, Lyman, Lisbon, Sugar Hill, Franconia, Bath, Landaff, Easton, Lincoln, Livermore, Haverhill, Benton, Woodstock, Thornton, Waterville, Campton, Ellsworth, Warren and Piermont.

(b) The "North Country Tourist Gaming Area" shall include all of the municipalities and unincorporated towns of Coos County.

II. The gaming oversight authority shall issue 2 operator's licenses for each of the New Hampshire electronic gaming areas established in paragraph I, provided there are eligible applicants for such licenses.

284-A:8 Licenses, Number of Electronic Games of Chance Machines.

I. No person shall engage in the ownership, possession, transfer, maintenance, repair or operation of an electronic games of chance machine unless such person is licensed in accordance with the provisions of this chapter, local approval as provided in RSA 284-A:13 has been obtained, the gaming oversight authority has adopted temporary rules pursuant to RSA 284-A:2, VII, and the sweepstakes commission has adopted temporary rules as provided in RSA 284-A:4, V.

II. Any pari-mutuel license issued by the pari-mutuel commission following the effective date of this chapter shall not authorize the pari-mutuel licensee to install, operate or conduct electronic games of chance machines until the pari-mutuel licensee is issued an operator's license pursuant to the provisions of this chapter.

III. Any operator applicant shall be licensed as an operator licensee in accordance with the provisions of this chapter prior to engaging in any activity authorized by this chapter.

IV. Any employee of an operator licensee who is directly engaged in the installation or operation of electronic games of chance machines or in any moneys associated with the playing of electronic games of chance machines and all supervisory and managerial personnel, shall be licensed as an electronic games of chance employee in accordance with this chapter prior to engaging in any activity authorized by this chapter.

V. Any technology provider engaged in the business of providing, installing, maintaining or repairing electronic games of chance machines shall be licensed by the gaming oversight authority in accordance with the provisions of this chapter prior to engaging in any activity authorized by this chapter. No technology provider shall be entitled to operate electronic games of chance machines.

VI.(a)(1) On or prior to June 30, 2001, each operator licensee at a pari-mutuel licensee location at which live dog racing is conducted shall be limited to 750 electronic games of chance machines in operation at each such pari-mutuel licensee location.

(2) On or prior to June 30, 2001, the operator licensee at the pari-mutuel licensee location at which live thoroughbred horse racing is conducted shall be limited to 1500 electronic games of chance machines in operation at such pari-mutuel licensee location.

VII. On or prior to June 30, 2001, each operator licensee at a grand hotel licensee location or a resort hotel licensee location shall be limited to 500 electronic games of chance machines.

VIII. The gaming oversight authority shall consider the following factors prior to issuing an operator's license to a grand hotel applicant, resort hotel applicant or applicable operator applicant:

(a) Total distribution of net machine income.

(b) A detailed economic plan for the municipality and the surrounding region where the grand hotel or resort hotel is located with supporting documentation to explain the following:

(1) Quality of jobs including, but not limited to, wages and fringe benefits.

(2) Historical unemployment in the area.

(3) Direct and indirect employment gain.

(4) Impact on the tourism-based economy.

(5) Impact on regional economic development.

(6) Historical and projected household income.

(7) Tourist trends.

(c) A business plan to support the request for electronic games of chance machines.



- (d) Market demand for the electronic games of chance machines.
- (e) Qualifications of those persons who own or manage the grand hotel applicant or resort hotel applicant.
- (f) Regional population.
- (g) Vehicle traffic.
- (h) Total square footage of the grand hotel or resort hotel facility and the total land acreage of such facility.
- (i) Housing availability for employees.
- (j) Availability of suitable infrastructure.
- (k) Evidence provided by the applicant that the applicant has received local approval as required.
- (l) Other information that the authority may require.

IX. Commencing as of July 1, 2001 and thereafter, but no more frequently than at 6-month intervals thereafter, the sweepstakes commission may increase the number of electronic games of chance machines in operation by an operator licensee, subject to approval of such recommendation by the gaming oversight authority. The determination by the sweepstakes commission shall be made after due consideration of the economic conditions present at the time of the determination, including without limitation, the performance of the operator licensee in operating the then existing electronic games of chance machines, the present market conditions and market forecasts and projections, and the financial ability of the operator licensee. Prior to any determination hereunder, the sweepstakes commission shall notify each operator licensee in writing that the sweepstakes commission intends to consider an adjustment in the number of electronic games of chance machines. No such determination shall be made until after notice and a hearing by the sweepstakes commission and specific findings and rulings are made by the sweepstakes commission. The sweepstakes commission shall adopt rules under RSA 541-A, regarding the procedures under this paragraph.

X. In addition to all other enforcement powers it has, the sweepstakes commission may, after notice and hearing, reduce the number of electronic games of chance machines at a pari-mutuel licensee location, grand hotel licensee location or resort hotel licensee location for cause, including the failure to comply with the rules and regulations of the gaming oversight authority, the pari-mutuel commission or the sweepstakes commission.

XI. No pari-mutuel licensee, grand hotel applicant, resort hotel applicant or operator licensee shall alter, construct, remove, or enlarge any structure at the pari-mutuel licensee location, grand hotel licensee location or resort hotel licensee location, as applicable, without the prior approval of the gaming oversight authority, except for the winterization of structures existing as of January 1, 1998.

284-A:9 Application and License Requirement for State License for Electronic Games of Chance.

I. An applicant who has been authorized for an electronic games of chance license shall secure a state license from the gaming oversight authority. An applicant must complete and sign an application on the forms prescribed by the gaming oversight authority. The application shall include the full name, residence, date of birth, and other personal identifying information of the applicant, and if a corporation or other form of business enterprise, the same information shall be provided with respect to each partner, trustee, officer, director, and any shareholder or other holder who owns more than 10 percent of the legal or beneficial interests of such entity.

II. Whenever the gaming oversight authority shall receive an application, including any application under RSA 284-A:10, it shall refer the same to the attorney general who shall conduct an investigation. The investigation may be conducted through any appropriate state or federal law enforcement system and may seek information as to the subject's financial, criminal or business background, or any other information which the attorney general, in his or her sole discretion, may find to bear on the subject's fitness to be associated with the ownership or management of the operation of electronic games of chance machines in New Hampshire, including, but not limited to, the subject's character, personal associations, and the extent to which the subject is properly doing business in the manner in which it purports to operate. When the gaming oversight authority requests such an investigation, the attorney general shall report the results of his or her investigation to the gaming oversight authority within 90 days after the receipt of said request. Notwithstanding any other law to the contrary, the results of any such investigation shall be confidential and shall not be subject to disclosure or to public inspection, except that the attorney general, in the attorney general's sole discretion, shall determine the extent to which and the manner in which said results may be reported to the gaming oversight authority or other state agency or official and, if reported, whether such results are to retain their confidential character; provided, however, that whenever the attorney general conducts such an investigation, the attorney general shall notify the gaming oversight authority whether or not in his or her opinion such person is fit to be associated with participation in the ownership or management of the operation of electronic games of chance machines in this state. The attorney general shall have the authority to conduct an investigation on the attorney general's motion into the background of the license applicant or holder, or any person or entity upon whom the license applicant or holder relies for financial support.

III. In any investigation conducted pursuant to paragraph II, the attorney general or any duly authorized member of the attorney general's staff may require by subpoena or otherwise the attendance of witnesses and the production of such correspondence, documents, books and papers as he deems advisable, and for purposes of this section, may administer oaths and take the testimony of witnesses. No person shall be excused from testifying or from producing any book or paper in any investigation conducted pursuant to paragraph II upon the ground that such testimony or documentary evidence might tend to incriminate such person; provided that if, after a claim of privilege, the attorney general, in writing, orders such person to testify or produce documentary evidence, he or she shall not be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing which he or she, under oath, disclosed or produced. No person so testifying shall be exempt from prosecution or punishment for any perjury committed by the person in his or her testimony.

IV. The gaming oversight authority shall charge the applicant an application fee of \$100,000 which shall be used to defray the cost of processing the application. If the cost of processing the application exceeds \$100,000, the applicant shall pay the difference. The attorney general shall charge the applicant an investigation fee of \$50,000 which shall be used to defray the cost of the background investigation. If the cost of the background investigation exceeds \$50,000, the applicant shall pay the difference.

#### 284-A:10 Licensure Requirements.

I. No operator's license shall be issued by the gaming oversight authority unless the applicant has proven to the satisfaction of the gaming oversight authority by clear and convincing evidence:

(a) Its financial stability, integrity and responsibility, considering, without limitation, bank references, business and personal income and disbursement schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check records and ledgers.

(b) The integrity of all financial backers, investors, mortgagees, bondholders, and holders of indentures, notes and other evidences of indebtedness of the applicant.

(c) Its good character, honesty and integrity, considering, without limitation, information pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application.

(d) Its business ability and experience in the manufacture, installation, repair, maintenance or operation of electronic games of chance machines, as appropriate, so as to establish the likelihood of a successful and efficient operation.

II.(a) In addition, no operator's license shall be issued by the gaming oversight authority to any applicant unless the applicant has proven to the satisfaction of the gaming oversight authority by clear and convincing evidence that each director, officer or similar principal employee and each direct or indirect owner satisfies the standards for licensure contained in RSA 284-A:10, I.

(b) The gaming oversight authority may, in its discretion, waive the qualification requirement for any such person who is not significantly involved in the activities of the applicant, does not have the ability to significantly influence or control the applicant, or for other good cause.

(c) Except as provided in RSA 284-A:10, II(d), no person who owns, directly or indirectly, legally or beneficially, 10 percent or less of the equity securities or 20 percent or less of the outstanding debt securities of a publicly traded holding company of an applicant for an operator's license shall be required to be qualified pursuant to the provisions of this section prior to the issuance of such a license to the applicant.

(d) If an operator licensee has 25 or fewer holders of its equity securities, either directly or indirectly, legally or beneficially, then each such holder shall satisfy the standards of RSA 284-A:10, II(a).

III. No technology provider's license shall be issued by the gaming oversight authority after recommendation by the sweepstakes commission unless the applicant has demonstrated to the satisfaction of the gaming oversight authority by clear and convincing evidence that it satisfies the standards contained in paragraphs I and II of this section. The sweepstakes commission shall establish the form of application which must be completed by each applicant for a technology provider's license. Each technology provider license applicant shall be subject to the investigation set forth in RSA 284-A:9 except that all investigatory reports shall be provided to the sweepstakes commission and the gaming oversight authority.

IV. No electronic games of chance employee license shall be issued by the gaming oversight authority unless the applicant has proven to the satisfaction of the gaming oversight authority by clear and convincing evidence that such person satisfies the standards contained in paragraph I of this section.



V. All information and data required by the gaming oversight authority, the pari-mutuel commission, the sweepstakes commission, or gaming enforcement division to be furnished pursuant to this chapter, or which may otherwise be obtained by the gaming oversight authority, the pari-mutuel commission, the sweepstakes commission, or gaming enforcement division in the performance of their duties under this chapter, except information regarding net machine income, shall be considered to be confidential and shall not be revealed in whole or in part except in the course of the necessary administration of this chapter, upon lawful order of a court of competent jurisdiction, or with the approval of the commissioner of safety, to a duly authorized law enforcement agency.

VI. The gaming oversight authority shall charge an application fee of \$50,000 which shall be used to defray the cost of processing the electronic games of chance employee licensing. If the cost of processing the application exceeds \$50,000 for the electronic games of chance employee licensing, the applicant shall pay the difference.

VII. The sweepstakes commission shall charge an application fee of \$50,000 which shall be used to defray the cost of processing the technology provider's license. If the cost of processing the application exceeds \$50,000 for the technology provider's license, the applicant shall pay the difference.

VIII. In addition to all other fees, the sweepstakes commission shall collect from each pari-mutuel licensee, grand hotel applicant, resort hotel applicant, or operator licensee the annual fee of \$50 for each electronic game of chance machine located at the pari-mutuel licensee location, grand hotel licensee location, or resort hotel licensee location and the annual fee of \$10,000 from each technology provider.

284-A:11 Exclusion of Minors.

I. No person under the age of majority shall play an electronic games of chance machine authorized by this chapter.

II. No pari-mutuel licensee or operator's licensee shall knowingly permit a minor to play or participate in any aspect of the play of an electronic games of chance machine.

III. Each violation of RSA 284-A:11, I shall be punishable by a fine of no more than \$1,000 and shall be payable by such person who violates such paragraph.

IV. Each violation of RSA 284-A:11, II shall be punishable by a fine of no more than \$1,000 and shall be payable by the pari-mutuel licensee or operator licensee that is found to have violated such paragraph.

284-A:12 Minimum Distribution of Net Machine Income.

I. The operator licensee at a grand hotel licensee location or a resort hotel licensee location shall, at a minimum, distribute net machine income generated by such operator licensee at a grand hotel licensee location or resort hotel licensee location as provided in paragraph II of this section excluding the payment set forth in RSA 284-A:12, II(c). All other operator licensees shall distribute net machine income as set forth in paragraph II of this section excluding the payment set forth in RSA 284-A:12, II(d).

II. Subject to the provisions of RSA 284-A:12, I, net machine income generated by an operator licensee shall be distributed and paid as follows:

(a) Sixty-two percent of net machine income shall be paid to the state from which the state shall pay for its costs of regulation and administration; the acquisition and operation of the central computer system; the lease payments due to technology providers; and the balance shall be deposited with the treasurer for funding public education.

(b) Two percent of net machine income shall be paid to the municipality in which an operator licensee operates electronic games of chance machines.

(c) Three and two tenths percent of net machine income generated by an operator licensee at a pari-mutuel licensee location shall be paid to the pari-mutuel commission which will establish a horse racing purse fund for live horse racing and the horse racing purse fund shall be disbursed as follows:

(1) The sum of \$257,000 each year and adjusted annually for inflation to the Jockeys Guild Health and Welfare Trust maintained by Jockeys Guild, Inc. for the sole purpose of providing health and welfare benefits to active, disabled, and retired jockeys in accordance with eligibility criteria established by the Guild; and

(2) The balance of such fund toward purses for live horse racing conducted by the pari-mutuel licensee at such pari-mutuel licensee location.

(d) Three and two-tenths percent of net machine income generated by an operator licensee at a grand hotel licensee location or a resort hotel licensee location shall be paid and disbursed as follows:

(1) One and six-tenths percent of net machine income shall be paid to the travel and tourism joint promotional advertising fund hereby established in the office of the state treasurer, to be used by the office of travel and tourism, division of economic development, department of resources and economic development to promote travel and tourism in the state; and

(2) One and six-tenths percent shall be paid to the pari-mutuel commission which will establish a live racing purse fund for live dog racing purses for live dog racing conducted by a pari-mutuel licensee at its pari-mutuel licensee location.

(e) Thirty-two and eight-tenths percent of net machine income shall be retained by the operator licensee.

III.(a) The pari-mutuel commission shall adopt rules and regulations regarding the disbursement of moneys collected in the horse racing purse fund created in RSA 284-A:12, II(c) to the pari-mutuel licensee which conducts live horse racing for live horse racing purses.

(b) The pari-mutuel commission shall adopt rules and regulations regarding the disbursement of moneys collected in the live racing purse fund created in RSA 284-A:12, II(d)(2) to a pari-mutuel licensee which conducts live horse racing or live dog racing at its pari-mutuel licensee location for purses for such live racing.

IV. All distributions to the state, the pari-mutuel commission, the state treasurer, and the municipality shall be made by the operator licensee within 5 business days after the end of each week in which net machine income is generated. The operator licensee shall pay a fine equal to the greater of \$50 for each day in which such payments are overdue in whole or in part or interest on the unpaid amount with interest calculated at the annual rate of 10 percent for each day for which the payment due is late. The late payment penalty shall be paid by the operator licensee to the sweepstakes commission. Notwithstanding the foregoing, the fine imposed in this paragraph shall not limit the gaming oversight authority from imposing further sanctions if the sweepstakes commission determines that an operator licensee habitually violates this section.

284-A:13 Procedures for Adoption by Local Community.

I. Any town or city in which a pari-mutuel licensee location, grand hotel licensee location, or resort hotel licensee location is situated may adopt the provisions of RSA 284-A, to allow the operation of electronic games of chance, in the following manner:

(a) In a town, the question shall be placed on the warrant of a special or annual town meeting under the procedures set out in RSA 39:3, and

shall be voted on a ballot; provided, however, if the question is placed on the warrant at a special town meeting, it shall be the only question at such special town meeting. In a city, the legislative body may vote to place the question on the official ballot for any regular municipal election, or, in the alternative, shall place the question on the official ballot for any regular municipal election upon submission to the legislative body of a petition signed by 5 percent of the registered voters.

(b) The selectmen or city council shall hold a public hearing on the question at least 15 days but not more than 30 days before the question is to be voted on. Notice of the hearing shall be posted in at least 2 public places in the municipality and published in a newspaper of general circulation at least 7 days before the hearing.

(c) The wording of the question shall be substantially as follows: "Shall we adopt the provisions of RSA 284-A, allowing the operation of electronic games of chance at the licensed pari-mutuel, grand hotel, or resort hotel facility located within the town?"

II. If a majority of those voting on the question vote "Yes," RSA 284-A shall apply within the city or town and may not be rescinded by the city or town.

III. If the question is not approved, the question may later be voted upon according to the provisions of paragraph I, provided, however, that the town may consider the question at no more than one special town meeting and the annual town meeting in the same calendar year.

284-A:14 Inspection of Machines; Penalty for Tampering or Manipulating.

I. The sweepstakes commission shall, from time to time, test electronic games of chance machines installed at a pari-mutuel licensee location, grand hotel licensee location, or resort hotel licensee location. In conducting such tests, the sweepstakes commission shall use the services of an independent laboratory, the cost of which independent laboratory shall be paid by the technology provider.

II. Any person who, with the intent to manipulate the outcome, payoff or operation of an electronic games of chance machine, manipulates the outcome, payoff or operation of any electronic games of chance machine by physical, electronic or mechanical means, shall be guilty of a felony.

284-A:15 Electronic Games of Chance Machines.

I.(a) An operator licensee shall provide to the gaming oversight authority, the sweepstakes commission and, if regulated by the pari-mutual commission, to the pari-mutuel commission, by diagram a description of:

(1) The location of each electronic games of chance machine available for play by the public.

(2) The location of all areas for the storage, maintenance or repair of such machines.

(3) A description of all security measures to be taken for the safeguarding of such machines.

(4) The location and security measures taken for the safeguarding of all moneys, tokens, or other items of value utilized in the use of electronic games of chance machines.

(5) All procedures for the operation, maintenance, repair and inserting or removing of moneys, tokens, or other items of value from electronic games of chance machines.

(b) All of the above shall be approved by the gaming oversight authority prior to commencing the operation of any electronic games of chance machines.



II. No electronic games of chance machine shall be possessed, maintained, exhibited, brought into or removed from a pari-mutuel licensee location, a grand hotel licensee location, or a resort hotel location by any person unless such machine has permanently affixed to it an identification number or symbol authorized by the gaming oversight authority and prior notice of any such movement has been given to the sweepstakes commission.

III.(a) Each operator licensee shall maintain secure facilities for the counting and storage of all moneys, tokens, or other items of value utilized in the conduct of electronic games of chance machines.

(b) All drop boxes and other devices where moneys, tokens, or other items of value are deposited in electronic games of chance machines and all areas wherein such boxes and devices are kept while in use shall be equipped with 2 locking devices, one key which shall be under the exclusive control of the sweepstakes commission and the other under the exclusive control of the operator licensee. Said drop boxes and other devices shall not be brought into the pari-mutuel licensee location, grand hotel licensee location, or resort hotel licensee location or removed from an electronic games of chance machine, locked or unlocked, except at such times and such places and according to such procedures as the sweepstakes commission may require to safeguard such boxes and devices and their contents.

IV.(a) No electronic games of chance machine shall be used to conduct gaming unless it is identical in all electrical, mechanical and other aspects to a model which has been specifically tested by the sweepstakes commission and licensed for use by the sweepstakes commission.

(b) The sweepstakes commission shall, by rule, establish technical standards for approval of electronic games of chance machines, including mechanical and electrical reliability and security against tampering, as it may deem necessary to protect the public from fraud or deception and to ensure the integrity of their operation.

(c) All electronic games of chance machines in operation at a pari-mutuel licensee location shall provide a pay off of at least 87 percent on an average annual basis.

(d) All tickets given as prizes or winnings from electronic games of chance machines must be redeemed for cash within one year after the date of winning. After the expiration of that one year, all such unredeemed tickets shall become property of the state of New Hampshire, notwithstanding any other law to the contrary.

V. An operator licensee who operates electronic games of chance machines shall not be restricted in the days of operation of such machines, so long as the pari-mutuel licensee has scheduled at least the number of days of racing as required by RSA 284:22-a, II(a)(3). The hours of operation on each day shall be determined by the gaming oversight authority.

VI. The sweepstakes commission shall negotiate and execute agreements with at least 3 technology providers in accordance with reasonable business terms subject to the provisions of RSA 284-A:4, (I)(f). Each operator licensee shall obtain electronic games of chance machines from such technology providers and no others, provided, that no operator licensee shall obtain more than 50 percent of its electronic games of chance machines from any one such technology provider.

VII. The operation of electronic games of chance machines at a grand hotel licensee location or resort hotel licensee location shall not be restricted in the days of operation of such machines. The hours of operation on each day shall be determined by the gaming oversight authority.

VIII. Electronic games of chance machines shall be operated only at times when the public is allowed access to the locations. They shall not be operated during private functions.

284-A:16 Term of License.

I. Any operator's license or technology provider's license issued pursuant to this chapter and any renewal thereof shall be valid for 2 years unless earlier suspended or revoked by the gaming oversight authority.

II. Any electronic games of chance employee license or renewal thereof issued pursuant to this chapter shall be valid for 3 years unless earlier suspended or revoked by the gaming oversight authority.

284-A:17 Presence of the Gaming Oversight Authority and Sweepstakes Commission.

I.(a) The gaming oversight authority may be present at any pari-mutuel licensee location, grand hotel licensee location, or resort hotel licensee location at which electronic games of chance machines are operated at all times when the facility is open to the public.

(b) The operator licensee may be required by the gaming oversight authority or gaming enforcement division to provide such office space and equipment which the commission shall by rule determine is reasonably necessary or proper for them to fulfill their responsibilities.

II. The sweepstakes commission may be present at any time an electronic games of chance machine is opened to remove or insert any drop box, hopper, or other mechanism containing money, tokens, or other items of value. The sweepstakes commission may be present in the count room at any time money, tokens or other items of value utilized in electronic games of chance machines are counted.

284-A:18 Sanction Powers of the Gaming Oversight Authority.

I. The gaming oversight authority shall have the sole and exclusive authority, following appropriate hearings and factual determinations, to impose sanctions against any person for any violation of this chapter or any rule of the gaming oversight authority, the sweepstakes commission, or the pari-mutuel commission adopted under the provisions of this chapter.

II. The gaming oversight authority shall have the authority to impose sanctions upon any person for any violation of this chapter or the rules of the gaming oversight authority, the pari-mutuel commission or the sweepstakes commission as follows:

(a) Revocation or suspension of a license.

(b) Civil penalties as may be necessary to punish misconduct and to deter future violations, which penalties may not exceed \$20,000 for each violation.

(c) Order restitution of any moneys or property unlawfully obtained or retained by a person.

(d) Issue a cease and desist order which specifies the conduct which is to be discontinued, altered, or implemented by the person.

(e) Issue letters of reprimand or censure, which letters shall be made a permanent part of the file of each person so sanctioned.

(f) Impose any or all of the foregoing sanctions in combination with each other.

III. In determining appropriate sanctions in a particular case, the gaming oversight authority shall consider:

(a) The risk to the public and to the integrity of electronic games of chance machine operations created by the conduct of the person.

(b) The seriousness of the conduct of the person and whether the conduct was purposeful or with knowledge that it was in contravention of the provisions of this chapter or the rules of the gaming oversight authority, the pari-mutuel commission or the sweepstakes commission.

(c) Any justification or excuse for such conduct.

(d) The prior history of the person involved.

(e) The corrective action taken by the person to prevent future misconduct of a like nature from occurring.

(f) In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the person.

(g) Notwithstanding the foregoing, in the event that a person receives 3 civil penalties each in the amount of \$20,000 during the term of such person's license, the gaming oversight authority shall either revoke the license for the balance of the term of the license or suspend such license for a period of 60 days, as determined by the gaming oversight authority.

284-A:19 Declaration of Limited Exemption from Operation of Provisions of 15 U.S.C. section 1172. Pursuant to section 2 of an act of Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being Chapter 1194, 64 Stat. 1134, and also designated as 15 U.S.C. sections 1171-1177, the state of New Hampshire, acting by and through the duly elected and qualified members of its legislature, does hereby, in accordance with and in compliance with the provisions of that section 2 of that act of Congress, declare and proclaim that section 2 of that act of Congress shall not apply to any gambling device in this state where the transportation of such a device is specifically authorized by and done in compliance with the provisions of this chapter and any rules adopted pursuant to it, and that any such gambling device transported in compliance with state law and rules shall be exempt from the provisions of that act of Congress.

284-A:20 Legal Shipment of Gaming Devices into New Hampshire. All shipments into this state of gaming devices, the registering, recording and labeling of which has been duly had by the manufacturer or dealer in accordance with sections 3 and 4 of an act of Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being chapter 1194, 64 Stat. 1134, and also designated as 15 U.S.C. sections 1171-1172, shall be deemed legal shipments into this state.

284-A:21 Effect on Other Laws. This chapter shall take precedence over any other law, rule, ordinance or regulation of the state or its political subdivisions to the contrary.

56 New Sections; Department of Safety Gaming Enforcement Division Established. Amend RSA 21-P by inserting after section 11 the following new sections:

21-P:11-a Department of Safety Gaming Enforcement Division.

I. There is established within the department a division of gaming enforcement under the supervision of the commissioner of safety. The division shall be authorized to:

(a) Investigate violations of RSA 284 or RSA 284-A and the rules adopted under the provisions of RSA 284 or RSA 284-A and initiate proceedings before the gaming oversight authority for such violations.

(b) Report the results of any investigation conducted to the pari-mutuel commission, the sweepstakes commission or the gaming oversight authority, as appropriate.

(c) Participate in any hearing conducted by the pari-mutuel commission or the sweepstakes commission.



II. The commissioner of safety shall organize the division into such units as the commissioner deems necessary. The commissioner of safety may employ such personnel as the commissioner deems necessary to fulfill the responsibilities of the division.

21-P:11-b Enforcement Expenditures. Notwithstanding any other provisions of law, the governor and council with the prior approval of the fiscal committee of the general court, upon request from the commissioner of safety may authorize the transfer of general funds to the department of safety to implement and enforce this chapter.

57 License Restricted. RSA 284:16-c is repealed and reenacted to read as follows:

284:16-c License Restricted.

I. Notwithstanding any other provision of law, the pari-mutuel commission shall not issue a license to conduct live thoroughbred horse racing or live harness horse racing pursuant to RSA 284:16 to any applicant if the place where such races or race meets are to be held is within a radius of 40 miles of the place where live thoroughbred horse races or race meets have already been licensed pursuant to RSA 284:16; provided, however, that the pari-mutuel commission may issue a license to conduct live harness racing to the holder of a license to conduct live thoroughbred racing if the live harness racing is conducted at the same place where the live thoroughbred racing is being conducted.

II. Notwithstanding any other provision of law, the pari-mutuel commission shall not issue a license to conduct live dog racing pursuant to RSA 284:16-a to any applicant if the place where the races or race meets are to be held is within a radius of 40 miles of the place where such races or race meets have already been licensed pursuant to RSA 284:16-a

58 Restriction on Gambling. RSA 284:17-c is repealed and reenacted to read as follows:

284:17-c Restriction on Gambling. Except as provided in the introductory paragraph of RSA 284:22, RSA 284:22-a, and RSA 284-A, no licensee who holds running horse races shall at the same facility hold any other kinds of races or permit any other type of gambling except harness horse races and activities licensed by the gaming oversight authority, pari-mutuel commission, or the sweepstakes commission.

59 New Subparagraphs; Grand Hotel Licensee; On-Sale Special License. Amend RSA 178:20, V by inserting after subparagraph (u) the following new subparagraphs:

(v) Grand Hotel. The commission may issue a special license to any person holding an operator's license with respect to a grand hotel licensee location under the provisions of RSA 284-A provided the grand hotel has an existing liquor license. Such special license shall allow the sale of liquor, wine and beverages in a dining room, function room, gaming room, lounge or any other area designated by the commission, without regard to whether meals are served therein, but only during the time gaming is being conducted under RSA 284-A.

(w) Pari-Mutuel Licensee or Operator Licensee. The commission may issue a special license to a person holding a pari-mutuel license or an operator's license at a pari-mutuel licensee location under the provisions of RSA 284-A provided the pari-mutuel licensee location has an existing liquor license. Such special license shall allow the sale of liquor, wine, and beverages within the pari-mutuel licensee location, including dining room, function room, gaming room, lounge, or any

other area designated by the commission, without regard to whether meals are served therein, but only during the time gaming is being conducted under RSA 284-A.

60 New Subparagraph; Travel and Tourism Joint Promotional Advertising Fund Created. Amend RSA 6:12, I by inserting after subparagraph (www) the following new subparagraph:

(xxx) Moneys received under RSA 284-A:12, II(d), which shall be credited to the travel and tourism joint promotional advertising fund established in 284-A:12, II(d).

61 New Subparagraph; Authorized Electronic Games of Chance Machines Not Prohibited. Amend RSA 647:2, V by inserting after subparagraph (c) the following new subparagraph:

(d) Electronic games of chance machines authorized pursuant to RSA 284-A.

62 Position Established; Appropriations.

I. To carry out the financial and educational reporting requirements of this act, there are hereby established within the department of education 6 full-time permanent positions as follows:

- (a) One systems development specialist IV, labor grade 25.
- (b) One audit administrator, unclassified group L.
- (c) Three auditors, labor grade 23.
- (d) One administrative assistant, labor grade 15.

II. The sum of \$600,000 is hereby appropriated to the department of education for the biennium ending June 30, 2001, to fund the positions created in paragraph I, including salary, benefits, rent, supplies, and travel. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

III. To carry out the administrative requirements of this act, there is hereby established within the department of revenue administration 2 full-time permanent positions of systems development specialist IV, labor grade 25, and a systems development specialist III, labor grade 22.

IV. The sum of \$2,700,000 for the biennium ending June 30, 2001, is hereby appropriated to the department of revenue administration to fund the costs necessary to implement this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

V. The sum of \$100,000 for the biennium ending June 30, 2001, is hereby appropriated to the department of education to fund the costs necessary to upgrade school districts' computer systems to carry out the reporting responsibilities of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

63 Severability. If any provision of this act or the application thereof to any person or circumstance is deemed invalid, the invalidity does not affect the other provisions or applications of the act which can be given effect without the invalid provisions or applications and to this end the provisions of this act are severable.

64 Effective Date.

I. Sections 45-46 of this act shall take effect upon its passage, and shall apply to returns and taxes and reports due on account of taxable periods beginning on or after January 1, 1999.

II. Sections 47-52 and 54-61 of this act shall take effect July 1, 1999.

III. Section 35 of this act shall take effect July 1, 1999 at 12:01 a.m.

IV. The remainder of this act shall take effect upon its passage.

1999-0681s

## AMENDED ANALYSIS

## I. This bill:

(a) Increases the rate of the tobacco tax and dedicates \$3,000,000 of annual tobacco tax gross revenues to a tobacco use prevention and cessation fund.

(b) Establishes a uniform education property tax to provide funding for an adequate education.

(c) Increases the rate of the business profits tax and the business enterprise tax.

(d) Adds a tax on rental of motor vehicles and a tax on admission charges and dues to the meals and rooms tax.

(e) Designates \$20,000,000 annually of tobacco settlement funds received by the state for education funding.

(f) Makes appropriations to the department of education and the department of revenue administration for the purposes of the bill.

## II. This bill:

(a) Establishes an educational adequacy and education financing reform commission.

(b) Establishes a system for calculating and disbursing state grants for educational adequacy.

(c) Appropriates funds to the commission for the purposes of this bill.

(d) Provides for certain catastrophic special education payments.

## III. This bill:

(a) Authorizes electronic games of chance at racetracks, grand hotels and resort hotels upon certain conditions and sets forth criteria for establishing and conducting such games of chance.

(b) Establishes requirements and guidelines for the distribution of net machine income.

(c) Establishes a gaming oversight authority and its authority and duties.

(d) Establishes a division of gaming enforcement within the department of safety.

(e) Establishes gaming areas.

(f) Establishes fee amounts for license applicants.

## AMENDED ANALYSIS

(g) Authorizes the issuance of special liquor licenses to electronic games of chance locations within grand hotels and pari-mutuel locations that have liquor licenses.

(h) Creates a special fund to be used by the office of travel and tourism for the promotion of travel and tourism in the state.

(i) Establishes live dog racing and horse racing purse funds administered by the pari-mutuel commission.

SENATOR D'ALLESANDRO: I would like to speak to the D'Allesandro/Trombly amendment that each one of you has before you. I don't want to be long, people have given of themselves today, and it has been a very long day and we have discussed this on numerous occasions, but I would like to say that there are people from state government who have worked diligently to put this together, and I certainly compliment the members of the attorney general's office and legislative staff who worked long into last evening to put this together. I appreciate that kind of effort because we are all here to solve a problem. That problem has been with us for over a year now. This plan does not satisfy everyone. What this plan does



is to attempt to address the problem that we are facing and that is properly educating youngsters in the state of New Hampshire. This plan contains the following items: A state wide property tax, increases to the business taxes, video gambling, an increase to the cigarette tax as proposed by Senator Squires with three cents being reserved for education, the tobacco settlement money, extension to the rooms and meals tax to rental cars and entertainment, existing state revenues with an adjustment for administration and revenue offsets. The bottom line for this plan is \$825,373,000. It takes adequacy to about \$4,300. Currently, in everyone's hands is the distribution of these dollars. In the bill, we go over the methodology by which this money will be distributed. What does the plan do? The plan brings money to communities in the state of New Hampshire. Is it perfect? Absolutely not. Is it a positive step forward? Yes. Is it an answer to the problem? Yes. We were sent here to address an education problem. This legislation, this amendment to HB 112 does that. As I said, I don't want to be long, you have all been here long and you have all worked hard. I just want to say that it takes a great deal of effort on everyone's part to come up with a solution. The history of America is one of compromises. Going back to the origin of this nation, there has been compromise after compromise. We strive for perfection, but really we don't arrive at it. There are things in this bill that people like and there are things that people don't like. I understand that. What this is, is an effort to put our best ideas forward and again, I have no monopoly on good ideas. Senator Trombly has no monopoly on good ideas. We hope that together we bring solutions and this is the solution that I bring to the table. Thank you very much, Madame President.

SENATOR COHEN: Throughout these weeks of debate I have tried to keep in mind the reason that we are all here. The purpose of all of these speeches, commendations, challenges, charts and amendments. The purpose is to keep the schools open. To keep our teachers employed and many teachers and students out there are scared. There is a real threat that we may lose our teachers to other states if we don't do something now. We must keep sending our children to school everyday. In order to achieve that goal we have to come to the realization, and it seems that enough of us have that; we will simply have to compromise with what we think is the best for the state and for our particular district. It is not easy to cast a vote for a plan that we may fully like. One that we know that some of our constituents don't support. But in order for us to move the process forward, to keep the schools open, we simply have to. Like most of us, I supported the Hager/Below/Fernald bill. I am convinced that a low income tax, mixed with a low property tax with the Homestead Exemption is the fairest mode of taxation and is the one that is most fiscally sound. Hager/Below/Fernald got the votes last week only through a compromise as we all know, which not only lowered the adequacy figure, but also included an agreement to move forward with the barrier to the market basket approach, should that income tax bill fail in the House. Well, although earlier reports of its death were greatly exaggerated, the income tax bill for 1999 anyway, is now dead. We made sure that the bill had a fair chance through the legislative process, but even its most resolute supporters have got to realize now that the time has come to move on, for our schools and for our bonding rating for the state of New Hampshire, which of course affect property taxes. The only plan, which I believe has a chance, is the market basket approach before us now. I have no doubt that there is something in this plan for

everyone to dislike. From my part, as you all know, I have pushed to protect the sea coast interest by making every effort to keep the property tax component under \$6 per thousand. I am pleased to say that is in here. Even at that rate, however, some of my communities will get hit with higher taxes. I will vote for this plan because I know that we have to move forward on this issue now, today. While I don't like it, I know that we can't each have the solution we want. For me, it is high property taxes. For one of you, it might be gambling or the tobacco tax, but the time has come for all of us to transcend personal considerations, transcend parochial considerations, and to transcend partisan considerations and to transcend political considerations. We have to do what is best for the students of New Hampshire. I hope and I believe that in the future, a better alternative will emerge with the consensus around it. At this moment, however, we no longer have the luxury of time to arrive at a solution, so, although my vote will be reluctant and full of misgivings, this plan will have my vote.

SENATOR SQUIRES: Madame President and members of the Senate, how did we get here? I refer not only to this amendment, but to the economic and political climate that exists in New Hampshire that has produced the following, "Be it resolve that we oppose any broad based tax, including an income tax, sales tax, value added tax, and, especially, a statewide property tax." That was written by the board of directors, one of the chambers of commerce in New Hampshire, but I am relieved to say that it wasn't Nashua. This was written a week within the warning issued by Moody's Investor Service, in which the ratings are over 25 municipal bonds be brought into question. How is it possible that an astute group of New Hampshire business people can be so far off the mark? This is an important question...and upon completion of my intention to address this question, I would like to talk about the bill. So I now speak to the body politic and not just to the people in this room. Behind this bill, and in fact, behind the Claremont II debate, is a manner that has dominated our political discourse for 30 years. I am speaking of what is commonly referred to as the pledge. The pledge to stand against whatever the current definition of a broad-based tax might be. While there is in much of today's news about the governor, I must remind us all that every one of her predecessors would find themselves constrained in the same manner, along with hundreds of legislators, although not the majority in this room. What I want to talk about is the type of thinking, implicit in the pledge and what has happened, because there is an important lesson to take away from Claremont II and the pledge, and if we fail to acknowledge this relationship, today's misfortunes will become tomorrow's outcome for those at a future time, confront intractable problems. The pledge as we have come to know it, suggests the answer before the issue. It stifles our thinking. It smothers discussion. It cripples our ability to reason and it diminishes our capacity for logic, making a mockery of debate. Like an invisible fist, the pledge has propelled many to elective office, while blocking a timely resolution of the problem, and then having delayed legislative response, it has pounded and shaped our efforts to address the court's decision. The fact that a dogmatic position almost invariably leads to a result that is antithetical to the proposition at hand, may come as a painful revelation. That reality is before us today. As recently as five years ago, the Claremont issue could have been addressed by an expenditure of approximately \$250 million, whereas today we are considering a figure in excess to \$800 million. By refusing to fund the Augenblick Formula year after

year, the legislature created an economic and legal climate that pushed the five school districts to seek redress in the court system. The Supreme Court, despite the views of some, did not seek to engage themselves in the funding of public education, they responded to the entreaties of citizens who felt disabused and abandoned by the legislature. Why didn't the legislature react? Because we didn't have the tools at hand to do so. We didn't have the tools at hand because we, in concert with the public, declined to consider all potential revenue sources thanks to the pledge. It gets worse. One of the great ironies of today's debate is that many that ardently believed in the pledge are just as ardently opposed to gambling. The truth is, the pledge opened the door to gambling. Most discouraging of all is the fact that virtually every revenue structure that we have considered is inflexible or inelastic. Assume that the school population in New Hampshire will increase by 25 percent over the next 10 years, based on current estimates of a growth of 7 percent for the year 2002. Does anyone believe that a statewide property tax, gambling, increased business tax, tobacco settlement funds, and an entertainment tax can keep up with this? I think not. What we will see therefore, is an increase in the tax and an increase in the number of gambling machines. At this point, when the system breaks two things happen, 1) we will go back to court and 2) we will in a manner of speaking, raid the general fund. I need hardly remind you that the government of New Hampshire has other obligations to its citizens in addition to providing an adequate education. Affordable housing, issues relative to the high cost of pharmaceuticals, working adults without health insurance, caretakers for disabled citizens being paid an minimum wage, and access to secondary education at a reasonable cost are just a few. But as we strip away our general fund revenues as a result of the inflexible structure of our school funding, these conflicts will continue **TAPE CHANGE** and such is the lesson of history on the Claremont II and the political climate that shaped this response. Now to the bill. There are five characteristics of this legislation that I cannot support. 1) They are the manner in which we are changing the business enterprise tax. As originally passed, such an adjustment would have required a 2/3rds vote, and we are being asked in the interest of expediency and because a 2/3rds vote is lacking, to change the rate by a simple majority, which removes the 2/3rds requirement following which the rate is adjusted upward. This breaks faith with the implied and explicit intent of the original statute fracturing the promises that were made to the public. 2) The bill requires us to suspend common understanding of the meaning of words. The business enterprise tax is a tax on payroll, and it seems to me that an employer's payroll is an employee's income. A tax on a company's payroll is by logical extension, an income tax. 3) The bill uses a substantial portion of the tobacco settlement disregarding this issue, the issue that prompted that settlement and annihilates our last hope for a meaningful program for tobacco prevention and cessation. 4) The bill requires a substantial increase in the cigarette tax, illustrating the previously mentioned raid on the general fund. 5) Finally, there is the issue of gambling. My feelings on this are well known and do not warrant excessive repetition, except to say that once video gambling is instituted as a policy of this government, it will never go away. While it exists, it will seep into the fabric of our society, leaving behind it a myriad of social evils in the same fashion that occurred in every other setting in which it has been tried. Consider briefly, the nature of objections to the income tax. Nearly everyone who has con-



tacted me about this issue, and believe me, there have been many, have based on their objections on economic concerns that are times personal and at other moments applicable to the business climate. Opponents to the introduction to gambling in New Hampshire speak from an entirely different point of view. Instead of economic objections, I hear, and I sense a deep and profound philosophic distress. These concerns do not arise from people's pocketbooks, balance sheets, income statements and business outlook. The video gambling portion of this bill summon for us an excerption of the heart and maybe even the soul that says that it is wrong for government to take advantage of a segment of society. It is wrong for government to sow the seeds of social dislocation and repair. It is wrong for government to promote a vice. While such a proposal allows us in the electorate to escape confronting the property tax system in a direct and forthright manner, we, and future generations of New Hampshire may pay a terrible price. It is difficult to understand history when we look backwards, it is even more difficult to understand it at a time such as this when history, in a manner of speaking, is being made. But there is a lesson here, future elected officials should view such a dogmatic position as the pledge with great circumspection, and future voters should reflect with great care as to the wisdom of their demand. This mentally transforms manageable problems into nightmares, and it steals away government's ability to address the needs of many of our fellow citizens and may set in place, a system of revenue collections that is detrimental to the economic and philosophic well-being of us all. Thank you.

SENATOR BELOW: I rise in opposition to the proposed amendment. I know that the hour is late and every one has apparently made up their minds on how they are going to vote today. We expect a 12 to 11 vote, so I suspect that most of you wish that I would not prolong this debate. But my conscience moves me to speak my piece. I am reminded of the saying "Speak truth to power." As the Senate of New Hampshire, we possess tremendous power and responsibility to shape the public policies and laws of this state. We all seek the truth, and I am sure that there are very different views of the truth among us, particularly on this issue. But it is through open debate that we search for common understanding and truth to guide us in the exercise of our duties. I oppose this amendment because I believe that it is a betrayal of our duty to the citizens and youths of this state. Betrayal is a strong word. Allow me to explain. The proposed massive expansion of gambling through video slot machines casino leads us astray as a state. It breaks faith with our aspirations for education and the advancement of our civilization from culture. Man said that universe of public education is the great balancing wheel of society. Through education we empower our youth to begin to realize their human potential to learn and understand, and to develop the skills and capacities to grow, develop and thrive in our economy and society. Through education we build a better society. Yet with this amendment, we proposed to extract revenue, money disproportionately, from the small portions of our citizens and visitors who become addicted to the fast and seductive action of thousands of video game slot machines, 24 hours a day. Study after study has indicated that a very large proportion of the revenue from gambling comes from problem or pathological gamblers, individuals who have an unhealthy and addictive relationship to gambling. A study of the California Lottery found that 2/3 of the take came from 10 percent of the players. The University of Illinois economists figured that 52 percent of casino revenues comes from active problem and patho-

logical gamblers. University of Minnesota researchers calculated that a mere 2 percent of gamblers account for 63 percent of all legal wagers in that state. A 1997 study of video poker players in South Carolina found that 1 in 5 fit the criteria for problem gamblers. Various studies estimate that between 1 and 5 percent of the U.S. population are addicted to gambling. Studies and logic indicate that, as the proximity and variety of gambling options increase, so does the incidence of problem gambling and all the social and economic costs and consequences that follow. In Oregon, for example, when they had a lottery, but no video slots, they had three chapters of Gambler's Anonymous. Within five years of legalizing electronic games of chance, that number of self-help groups for gamblers in recovery had grown to 30, a ten-fold increase. This amendment proposes a four-fold increase in our reliance on gambling revenues to fund education, from about 70 million per year to about \$270 million total. Video games are considered by many to be the most addictive form of gambling because of their low cost per wager, rapid multimedia play and the illusion that some skill is involved. We risk much more than a 3 or 4 fold increase in gambling addiction. Studies have also found that those most at risk of gambling addiction include people with the attitude that money is the cause and solution to their problems, children of pathological gamblers, individuals with poor or limited education, and lower income citizens. Cross addiction is also a prevalent problem. Compulsive gamblers are much more likely than the average citizen to also have problems with drug abuse, alcoholism, and/or eating disorders. Christ taught us that how we treat and relate to the least among us is a measure of our relationship with God and all humanity. Part II, Article 83 of our constitution makes it a duty of our office, as legislators, to "inculcate the principles of humanity and general benevolence, among the people." Inculcate meaning to impress upon the mind by persistent urging — the principle of humanity — civilizing, refining; having what are considered the best qualities of humankind; tenderness, kindness, mercy — and we are to inculcate the principle of general — or widespread — benevolence — meaning any inclination to do good; goodwill; charity. Thus, it is our sworn duty, as leaders of this body politic, to foster the best qualities and the most potential for good in the people of our great state. In contrast, the massive expansion of gambling proposed under this bill makes the state of New Hampshire, we the people, the lead business partner in an enterprise that enables an expansion of destructive and addictive behavior. I do not believe that gambling is a sin or morally wrong per se. For many it simply is another form of entertainment. What is morally wrong is to place the state in the role of actively promoting an exceptionally pernicious addictive activity that exploits the weakness, vulnerability and illness of those in our society who can least afford it. One of our priorities in improving public education, should be to help children at risk succeed so that they can better realize their human potential and break dysfunctional cycles of addiction, abuse and poverty. Yet, this proposed massive expansion of gambling in New Hampshire will undermine some of the very families of children most at risk of failure and dropping out. The Lawrence county Prosecutor Jeffrey Bloomberg testified before the U.S. House of Representatives, on his experiences dealing with Deadwood, South Dakota where casino gambling was legalized. He said, "Crimes of theft, embezzlement, bad checks and other forms of larceny have increased. Our office has also seen an increase in the number of child abuse and neglect cases as a result of gambling. These run the spectrum from the children left in their cars all night while their parents gamble, to the children left at home alone

while their parents gamble, to the household without utilities or groceries because one or both parents have blown their paychecks gambling. Government is hooked on the money generated by gambling, and in the long term, the ramifications of this governmental addiction will be just as dire as for the individuals who become addicted to gambling.” There have already been at least two cases of children who have died locked up in their cars while their parents were playing at the video slot machines. I understand that Foxwood has posted signs in the parking lots warning parents not to leave children unattended in the parking lot. Some have given Delaware as an example. I was on the phone yesterday with a gentleman, Jim Grey, who is a businessman and owns some family restaurants in Dover. He has been there for 11 generations. The family goes back to before the Revolutionary War. He was deeply concerned about the impact of the quality of life. His concern is that the statistics don't really show the problems yet there because they are still in their honeymoon phase and their problems are really just starting to show. He gave some examples: In his own business, one of his restaurant managers, a good trustworthy employee for 15 years, was recently found that for the past 1-1/2 year she has been embezzling from his business at the rate of \$6,000 a month to feed her video slot habit. He has EMT's and ambulance drivers who run to the Dover Downs Tracks, and they report that the senior citizens, who forget to take their medications and end up having heart attacks or collapse from exhaustion, at the video slot machines. A friend of his runs a property maintenance business, and he found one of his employees in a garage late at night with a noose around his neck ready to commit suicide because he couldn't face his family because of the debt that he had built up. His point was that when the slots are 5 to 10 minutes from home or work, it is a different story than when they are a couple of hours away, as they have always been in Atlantic City, so why do we want to take this crapshoot with New Hampshire's quality of life, especially the lives of the most vulnerable among us? Why risk the unknown social costs and uncertain revenue? Former U.S. Senator Paul Simon, before he retired from Congress, spoke in 1995 on the Explosive Growth of Gambling in the United States. He noted that “One of the great weaknesses of American politics today, and one of the reasons for public cynicism toward those of us in politics, is our eagerness to tell the people only what they want to hear. Polling is a huge business, and if a poll suggests a stand is unpopular, too many find a convenient way of changing course, even if the public good is served by the unpopular action. An area of high sensitivity is taxation, as we all know, so when someone comes along and says, I have a simple way to get more revenue for you, and you do not have to raise taxes, that has great appeal to policymakers who must seek reelection. Those same people say to the policymakers, not only will I provide revenue for you without taxation, I will be very generous to you when campaign time comes. And they are.” There is no hypocrisy — in saying enough is enough. There is no hypocrisy - in saying until the state of New Hampshire establishes a better track record in preventing and treating addiction, we should not be the lead partner in an enterprise that promotes and enables a massive expansion of addiction. There is no hypocrisy in saying that the risks are too great and rewards too uncertain, and the stakes are too high to take this chance. I am sorry to say that my strongest hope and prayer today is that the House of Representatives will have the wisdom and courage to just say no to “slots for tots” so that we can move on and find an honest solution to funding an adequate education. Thank you.



SENATOR FERNALD: I am just barely old enough to remember the early days of the New Hampshire lottery, and there was a reason why we were the first state to have a lottery. States have banned lotteries because gambling is a social ill. It takes money that can be used for productive purpose and puts it into a completely unproductive purpose. Our experience where gambling has proliferated has shown that money that has gone into gambling has come out of paychecks, come out of child support, come out of rent money, come out of food money, and it is not to our advantage of our society. When the New Hampshire Lottery started, it was for education, and it was a fun thing. You could pick up a ticket when you were at the liquor store and it was just a little fun. But then we got some competition. Massachusetts got a lottery, other states got lotteries. Our lottery had to change to compete. We had to add more games, Mega bucks, scratch tickets, Power ball, we had to promote it heavily in the newspaper. We had to expand the number of outlets that would sell it, we had to put it on the television. It has changed our culture in New Hampshire. Many times I have been at a convenience store and have been behind someone who is buying \$20 or \$30 or \$40 worth of lottery tickets at a pop. This was unheard of when the lottery first started, but our culture has changed by the proliferation of gambling. If we take this step and allow video slots, our culture will change again. When we make more and more types of gambling available, then more and more money will be gambled and more and more money will be channeled out of productive purposes and into unproductive gambling. People who have looked at this and have businesses understand this fact. There is only so much money out there to be spent by people. If we spend more money on gambling, other businesses are going to be hurt. This is the reason why, for example, the Restaurant and Lodging Association has come out against an expansion of gambling because it is going to hurt their business, which means that it is also going to hurt our room and meals tax revenue and other tax revenue sources that we have from legitimate businesses. Now the arguments that I have heard in favor of gambling, is that we are already doing it, and they are already doing it in other states and people from New Hampshire are going to other states, so what is the harm? This is a whole different level of gambling. This huge expansion is going to come with huge costs. This is offered to us as free money from the state, but we know that the social costs are real, and that we should not take this gamble with the state of New Hampshire. The funding crisis for the schools is real. We need to solve that problem. This gambling increase is offered as a cure to our education-funding problem. Well, I believe that this cure is worse than the disease. The governor's taking the income tax off of the table. I hope that today, the New Hampshire legislature will take gambling off of the table as a way to resolve the funding crisis.

SENATOR BROWN: Fellow colleagues, it is here, April 1, 1999 the dreaded deadline is finally here. Ever since December 17, 1997 we have been working against this date. We have worked hard and I know that many of you worked very hard to define adequacy as required by the Supreme Court. We have worked to find new taxes to pay for this newly defined constitutionally adequate education. We have worked to find a consensus for some plans, any plan that will satisfy the court, but let's stop for just a moment and consider what we are doing. Is this really in the best interest of the whole state, or are we playing with fire with regard to our economy and our society? Will our public schools be better as a result of what we are doing here today? If the answer to these questions is not a resounding yes, then why are we doing this? The answer is to satisfy the court. I will

be very brief, I have one quote that I want to read from William A. Fischell, professor of economics from Dartmouth College. "If the people of New Hampshire were to be told that their chosen method of financing public education was inadequate, they would likely expect to be shown some evidence that a better system was available. At least 15 other states have, as a result of court decisions similar to Claremont, moved away from reliance on local property taxation and towards a more centrally funded system. Is there any evidence that these states have done a better job of preparing their children for life in the 21<sup>st</sup> century? The answer is no. Using a variety of data bases, I have searched for scholarly studies that have found that students from states with more centralized funding and financing, have done better by any measure of educational quality. There are none. There are, to the contrary, several studies that indicate that SATs and similar test scores are significantly lower in states that have moved away from the local property tax as the basic foundation for education financing. All of these studies have control for the other differences among the states such as raised test participation, raise in private school enrollment that might also account for higher or lower scores. It is notable that when states are ranked in these sophisticated studies by disinterested scholars, New Hampshire is always near the top." He continues, "It is reasonable to conclude that centralized financing does not improve measurably educational quality, and there are reasons to suspect that a larger state presence in financing education makes scores go down. To implement the Claremont ruling with its mandate for the centralized financing is to take a gamble whose odds are loaded against the future of our children." I have concluded that the reason that we are passing this school-funding package today is not because it will improve education, nor because it is going to be good for our state economy, but because the legislative process has been thwarted by the court. I do not judge the judge's motives, but I do their conclusion, how it was arrived at, and forcing the policy against the wishes of the citizens. The implementing of tax policy without the consent of our voters. I do not believe any good will come from this. In the long run, we will look back on this day, April 1, 1999 and wish that we had done differently, and so will our constituents. Thank you.

SENATOR F. KING: I don't have a prepared speech, I took the afternoon off to go to Manchester to run an errand for a constituent, but I do feel compelled to speak. I am going to vote for this this afternoon. I think that it is our responsibility to keep this process moving. After I vote on this today, I will have probably voted for all of the sins that there are. I voted last week for two bills that had income taxes in them, and I voted to keep the sales tax alive, and I don't think that property tax is a good idea, and I am going to vote for gambling. So, I think that I have fulfilled my obligation to vote for the sins. After my bill went down the other day and you heard me discuss, on three different occasions, that I thought that was the right thing, and I thought that \$550 million was more than enough money to solve this problem. I suppose that I could sit back and criticize everyone else's bill, but I don't think that is what you should do. I think that we have an obligation to vote this process to keep it going. We all know what is going to happen. We all know that we have to get to a Committee of Conference; ultimately, with the House. To sit back and criticize other people and other bills without having something to offer in exchange, I think, is wrong. The thing that bothers me the most about this process is that we are not dealing with the problem. There has only been one piece of legislation that has been be-

fore this Senate that deals with the problem. The problem is that we have towns in this state that cannot afford to provide an adequate education for their students. Only one piece of legislation addressed that. This list of towns that was passed out today, when you look at it, it is very interesting. Here is a town that is going to get \$1,972,000 from this piece of legislation. I had dinner the other night with a representative who happens to be a selectman of that town. He said that they don't want the money, that they don't need the money. They think that the money should go to the poor towns. There is another town here that is a property rich town on our largest lake in this state, and they are going to get \$3 million. They never got any money before. Then there is a town in here, in the north country, arguably the poorest town in the state, and under this very magnanimous \$825 million largess that is coming from the state, they essentially get the same amount of money that they are getting now. There is something wrong when we don't face the problem and raise the money and give it to the towns that need it, instead of giving it to the towns that don't want it. It was said on the floor here last week, and we later heard it on television, that this wasn't about education, and that it was about an income tax. I suggest that this is not about education, that it is about politics, and it is about time to face up to that and fund the towns that need the money and not spend \$825 million foolishly.

SENATOR LARSEN: I have been looking for the right words to talk tonight, and I am not sure that I will find them. I, too, don't have anything written, but I guess that I would echo Senator Fred King's statement that we don't have the luxury of doing nothing. I mentioned last week, and I would mention again to you, the four realities that the attorney general gave to us at the beginning of this. That is first, that the present system of funding education is unconstitutional, and must be discontinued. Second, a new system of state funding must be adopted and implemented, and the legislature has wide latitude in adopting those means. Third, the system of funding must provide for a constitutionally adequate public education, and must assure comparable funding for each district at a level which would provide for such an education. That is why you see this legislation providing comparable funding for every district. We don't have the luxury of going back to the Augenblick Formula and funding just the poor towns. Fourth, the attorney general told us something which is a good thing to remember today, and that is that these changes must replace the present funding mechanism by the end of the 1998 tax year, and that is today. I don't agree with everything that is in this Plan B. I have trouble with the video gambling. I have real trouble with it. The court gave us wide latitude to choose the means to decide, yet they did not grant us a wide latitude to do nothing. We need to get this issue over to the House, and we need to get into a Committee of Conference on the issue. In this plan are the elements that all of us have talked about throughout the year. A statewide property has always been talked, increases in the business tax, we can debate that. Video gambling continues to be there whether we want it or not. Cigarette tax increases, tobacco settlement, rooms and meals, we have been through it all. Rooms and meals is a sales tax, you can take that into the Committee of Conference and you can discuss it, but you don't have the luxury, not many more days to play with, waiting for that perfect solution. If we can find a better solution, then let's look for us, but we need to move on this. We need to get into a Committee of Conference. I believe that the House will look at this and reject one of the major funding sources. I believe that they will reject the video gambling, but the only way that you are go-



ing to know that, and the only way that we are going to know what we are going to a Committee of Conference on, is to move this process along. I urge you, let's move it along, it is time that we move it. Thank you.

SENATOR TROMBLY: I kind of feel like an Easter bunny. The chocolate Easter bunny is going to jump up and someone is going to bite my head off. I saw that on television, Madame President, the first thing eaten on those marshmallow chicks is their head. You know some of you are going to be surprised because I didn't know what I was going to say to you today. I really didn't. I thought that perhaps-seating **TAPE CHANGE** founding fathers. I say founding fathers intentionally because at that time our founding mothers were not consulted about issues. Our founding fathers argued over the birth of a nation, and what it was going to be and how it was going to be represented. One of the crucible, one of the issues in that crucible, was how do we count slaves? On the one hand some argued that they were property to be bought and sold, yet they wanted them counted for the purposes of the censuses for representation in congress. Our forefathers needed to make a decision and I considered them to be moral men. They made a decision and the decision was to count slaves as 3/5ths of a man, and I think that I can probably hear Senator Squires, ancestors saying at that time 'what type of a nation would do that' count a human being as 3/5ths of a person, let alone women not being counted at all? We are faced with a moral judgement today. That decision on how to solve the Claremont opportunity is no less easier for one senator than it is for another. Some of you object to the inclusion of gaming. I object to ignoring the poor and poor communities. I object to doing nothing for the sake of the poor, and the poor communities, and for the sake of saying that I was right, I have not yet reached that moral plateau in my life where I can look down and judge my constituents' intelligence of the value of their individual judgement on how to solve this problem. I want to move forward. There are poor, there are middle income families, there are elderly losing their homes to this oppressive tax system, and wagging our finger at the court isn't the answer, because the problem is not the court. We need to move forward, and the question that Senator Squires raised last week about "what kind of a state are we?" is valid. The answer to that will be given to us through the judgement of history, for the vote to pass this amendment today is not the end of the debate, it is the beginning of the debate. For that reason, and for the reasons that I believe that my ancestors voted, probably over their moral objections on the issue of slavery, to establish a common good for a greater cause. That cause today is the education of children for the establishment of a greater good for them, I support this amendment. Thank you, Madame, President.

SENATOR GORDON: I think in rising, I am reminded of something which I have heard many times. That is a story that Senator Blaisdell tells. I have been a Senator for two terms now, four years, and I have probably heard Senator Blaisdell tell this story ten times. Fifteen maybe. It is about Senator Lamontagne and how Senator Lamontagne had some issue that was of a special interest to his particular district, and it wasn't necessarily in the interest of the state, and how another Senator got up on the floor of the Senate and raved, "how could you do that, how could you do that?" and Senator Lamontagne said, "cause I got the votes." Frankly, I guess, I have to come to the realization that they got the votes. Ten years from now when people ask and they say 'how did we end up with gambling in this state?' I guess the answer is going to be "because they got the votes." A

little over a year ago, I had one of the most embarrassing days of my life. I stood here and I actually broke down in tears and cried on the floor of the Senate, and maybe some of you may recall that. It is not something that I am particularly proud of, but I matured that day. I got to where I think Fred King is, because Fred King says that this is about politics. Up until that day I envisioned myself to being Mr. Smith goes to Washington. Okay? Up until that time I had lots of idealism. I came down here and the whole thing that I was interested about was principle and doing what I thought was right. That day was a very simple bill. It had to do with Y2K, and the states' answer to Y2K, which was some bureaucrats answer which was we have the perfect solution to Y2K and we don't have to do anything about it if we just excuse ourselves from any liability. The perfect answer. Well, it was the wrong answer! But as I spoke against that last year, what I found out was that it didn't make a bit of difference what I said on the floor of the Senate that day. I came to realize that it didn't make a bit of difference, because I didn't have the votes, so it didn't make a difference whether I was right or wrong, I didn't have the votes. That day, all the Mr. Smith goes to Washington went out of me, and I got to be right where Senator King said we are today, and that is, I guess, I maybe understood what politics is all about. I am not going to go into detail about why I am not going to support the bill today because I don't think that I could improve upon the things that have been said by Senator Below and Senator Fernald and the other people. I just don't think gambling is where we want to be. We have one of the lowest crime rates in the nation, and then we invite gambling to come into the state of New Hampshire. I just can't understand that. I guess the issue comes down to this. I have listened to all of the fine speeches here today, whether they be Republican or Democratic, Senator Disnard, and I understand, I understand exactly what Senator Cohen has said that we have to do something. Therefore we have got to vote for this, and what Senator Trombly has said, we have to vote for this because we are running out of time. We have to help those people with high property taxes. Well, yes, I think so, but if I do that, then I give up all of Mr. Smith because I just don't think that's the right thing to do. I am not there. There is an alternative. You know that I have supported a sales tax. I haven't taken the pledge as Senator Squires has pointed out. I support the sales tax. I am willing to look at other alternatives. I want that to happen, but the one thing that I don't want to happen, I don't want to give up my right to have a say. I don't want seven people, four people of the House of Representatives and three Senators in that Committee of Conference, to decide for me, what is good for the state. I would like to do that here in the Senate, because I think that is what we ought to do, and that is what we are responsible for doing. I agree with Senator Cohen that at some point in time that we have to move it, but the only difference between Senator Cohen and me right now, and our feelings are, I think, that there are still alternatives. I don't want anybody to go out there today and say that they voted for gambling because there wasn't any alternative; because there are alternatives. Don't tell your constituents that there aren't. I am willing to work as hard anybody to put together an approach and vote for stuff that I hate in order to make it work, and I don't think that gambling should be a part of it. Thank you very much for this opportunity.

SENATOR RUSSMAN: I think that it is important for the people in the media and the people that are here to understand how we got to where we are because there is no question...all of us in our own way have worked diligently and extraordinarily hard in this effort. I voted

for an income tax proposal last week after we...most of us, had met to try to come up with some kind of way of finding ourselves out of this quagmire. At that time we talked about options in terms of a potential sales tax verses the gambling. But there were those, at that time that were just as vehement about sales taxes and gambling. I respect that. At that time in order to move the process as we all know, we felt that we had to somehow back into getting forward, we had to actually take a step backwards, before we could take two steps forward. So we ended up agreeing to vote for the income tax, in order to free people up from this incredibly held belief that they would have...on the income tax or something else... and just as there are those that have a belief in the value of gaming, we have to hopefully, release some of those people from that. So in order to go through this process, and as we all know, it is a process, some of these things we have to move forward. Now I made an agreement to do that last Thursday night, and my word is my bond. In this institution, I think, that if you have nothing else, that is the most important thing to have when you say that you are going to do something you do it. At that time I agreed to support this measure, because in the matrix of the way that we were looking at things, we lost even more people when we tried to put a sales tax of any measure into the mix. Come this morning to find out, we have actually got some people that would be now willing to consider that. So what does that mean? It means that to me at least, and I agreed to support this and I am going to vote for it, but I never agreed not to speak about it. Frankly, I don't like it, just as I didn't really didn't like the income tax proposal. I do think that in all reality that some of the money isn't going to the poorer towns as it should be, and there are other issues that I won't bore you with. My hope is that the House will take this and summarily deal with it so that we can free ourselves at this point to get on with the next item on the agenda, which would obviously be some type of rehash of what we have before us in this particular bill. I think that it is the only way that we are going to move the process forward. As painful as it may be and it is painful, to have to listen to and to agree with those opponents of this proposal. I think that they make extraordinarily good sense of what they have to say. An agreement is an agreement is an agreement here in the Senate, and I intend to honor that agreement that I made. I just hope that those people can now perhaps look at some type of a sales tax, if that is what it would take to take the gaming issue out of it, we will stay firm in that belief, and be ready to step up to the plate as a lot of us have in this situation, and take whatever the heat may be and try to do the right thing. I would urge us to get on with the business at hand and let the House do what it is summarily more than likely is going to do, and I expect that they would do and I probably urge my colleagues to do it in terms of moving the process and getting us where we need to go.

SENATOR KRUEGER: I took the pledge. I really did. It meant a lot to me to take the pledge. I am proud to have taken it, because I represented people that that pledge must have mattered to or I wouldn't be here. The pledge didn't get us here, that is delusional. What got us here is unfunded mandates from the federal government to do a special education. What got us here is mediocracy and compromise in education. What got us here is union controlled schools that let the bar slide. What got us here is high property taxes, and what got us here is especially are towns that need help. And you know what? I am willing to do some-



thing. I am not an obstructionist, because what I want would go right along with Mr. Smith goes to Washington. What I really want? I am for doing something. I am for lowering property taxes. We have offered a bill that would help that, that was defeated sorely here. I am for returning funding back to the legislature where educational funding belongs. Yes, I am willing to defy the court. I think that is tough. What I think is more important is that we have come so far away from education to taxation and now to corruption. How could we hand the dollar from the little lady who spent her last dollar, to the child in school so that we can help...and I read the description of what adequacy should be...that we are to help with moral fiber. That is the translation of leadership and character and caring and humanity. That is what that is. I thank you, Madame President, for letting me say this, but I thank each of the Senators who are here, who know in their hearts that just saying no, just like with drugs, just like with gambling, just like with alcohol and just like with tobacco, is very, very, very hard, but I will not be bullied by my peers, I will not be bullied by the courts, because I will stand here in honor, because you know what? There really is a Mr. Smith, only I think that he is right here in New Hampshire.

SENATOR HOLLINGWORTH: I had no intention to speak on this bill today, but a few minutes ago there was a suggestion that your word is your bond. As many of you know that I was going to be in Katie's position and Katy was going to be here. Many of you know that this morning that there was a change that one of the people who had agreed and given their word had decided that they were no longer part of that agreement. I know how hard it was for some people to vote last week on the low adequacy number. I felt compelled that I would hold my word even though sometimes during this week, when several things were said, I was very uneasy about that. But I said that I would hold my word and I would vote. But I have had several things happen in the last few hours and one of them was that for someone to be able to come back and change their position that...I would no longer be on the committee of conference. That is one thing. That is not that crucial of an importance to me. I can take that. But what I couldn't take was the implication from a lobbyist that because I received a campaign contribution from certain people that I was required to take the chair or that I was required to vote yes. There is a point when your word to this body has to be broken. It is when you cannot look at yourself in the mirror and feel that you are doing your constituents work, or that you are doing what you can live with. I apologize to those who think that I am breaking my word. I would never want to do that, because I have been here for a long time, and I think that my word has always been true to everyone in this body and true to everyone that I represent in the House. I am sorry that I have to bring this point up now, and I had no intentions of doing so, but I have been under considerable pressure, as many of you know last week, and when I gave my word, I gave it under some pressure, but I was willing to do that. At this moment in time, I feel compelled to defend myself for not keeping it.

SENATOR FRASER: I hadn't planned on speaking, and obviously there are a lot of people in this room, for whatever reason, think that I changed my commitment. Well I suppose that you could say that is true, but for the last two days I have had a terrible, terrible time with the proposed amendment to HB 112. I didn't miss any words, I told folks that I was concerned about it and some of you who I spoke to during the course of

today, I told you that I didn't sleep last night. I think that all of us at one time or another, the more information that we get on issues, we have a tendency to change our minds. This is nothing new. I had a lot of my constituents who are absolutely opposed to any sort of gaming being in this bill. So I am the one who stopped the press yesterday, I know that. But I talked to many of you during the course of today, and I now rise in support of the bill, because I think that it is the best thing to do. That is hard for me 1) because of the fact that gaming is in there. 2) I think as Senator King had said earlier, "I live in a poor community, and I would like to see more money being devoted to the poorer towns" which is what I think that this is all about anyway. It is supposed to be property taxes for the poor communities. I am not apologizing for the fact that I stopped this process today, not a bit. As a matter of fact, I am going to thank you all for being patient with me. I had troubles today; there is no question about that. No question in the world. But I want to see the bill pass now to get something over to the House, and see what they do with it. I think that I told someone earlier today that one of my problems was that I am getting tired of passing legislation and have the House kill it on us. That was one of the major reasons that I thought that if there is some other way that we can do this, something that the House would buy into, that I would support that. I am not going to apologize for delaying the process today, it meant a great deal to me, and I thank you all for your patience. I am going to vote for the amendment.

**Senator Blaisdell moved the question.**

**Adopted.**

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Blaisdell.**

**Seconded by Senator Francoeur.**

**The following Senators voted Yes: F. King, Fraser, McCarley, Trombly, Disnard, Blaisdell, Larsen, J. King, Russman, D'Allesandro, Klemm, Cohen.**

**The following Senators voted No: Gordon, Johnson, Below, Roberge, Fernald, Squires, Pignatelli, Francoeur, Krueger, Brown, Hollingworth.**

**Yeas: 12 - Nays: 11**

**Floor Amendment adopted.**

**Senator Johnson offered a floor amendment.**

**1999-0695s**

**09/01**

**Floor Amendment to HB 112-FN-A**

**Amend RSA 284-A:8 as inserted by section 55 of the bill by deleting paragraph IX and renumbering the original paragraphs X and XI to read as IX and X, respectively.**

**SENATOR JOHNSON:** The amendment deals with the paragraph that can be found on page 36, line 12. This amendment eliminates a provision that we just passed that will allow the increase of electronic gaming machines at the tracks and at the grand hotels. The bill as passed allows 750 machines to be installed at the dog tracks on or before June 30, 2001. It allows 1500 machines to be installed at the horse track on or before

June 30, 2001. It further allows 500 machines to be installed at the grand hotel locations on or before June 30, 2001. The problem is that on July 1, 2001, which could potentially be a single day after any of these locations install their machines, the Sweepstakes Commission, with the permission of the Gaming Oversight Committee, could begin a process to increase the number of machines at these locations. Increases in machines could continue to be made every six months. By removing this part of the legislation, we would keep the authority to increase the number of electronic gambling machines within the legislatures purview. I think that if we eventually do adopt expanded gambling, which I continue to oppose, at least we should keep the ability to further expand gambling firmly in the possession of the people's elected representatives. I urge you to support this floor amendment and maintain the legislature's ability to decide matters involving gambling. Thank you, Madame President.

**A roll call was requested by Senator Blaisdell.**

**Seconded by Senator Francoeur.**

**The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Roberge, Fernald, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Klemm, Hollingworth, Cohen.**

**The following Senators voted No: Disnard, Blaisdell.**

**Yeas: 21 - Nays: 2**

**Floor Amendment adopted.**

Senator Johnson offered a floor amendment.

**1999-0690s**

**09/01**

### **Floor Amendment to HB 112-FN-A**

Amend RSA 78-A:3, XX as inserted by section 48 of the bill by replacing it with the following:

XX. "Admission charge" means the amount paid for the right or privilege to have access to a place or location where amusement, entertainment or recreation is provided, exclusive of any charges for instruction. Places of amusement, entertainment or recreation include, but are not limited to, theaters, motion picture shows, auditoriums where lectures and concerts are given, amusement parks, race tracks, zoos, dance halls, ball parks, golf courses, tennis courts, gymnasiums, health and fitness clubs, skating rinks, auto shows, boat shows, camping shows, home shows, dog shows and antique shows. Places of amusement, entertainment or recreation shall not include ski areas.

SENATOR JOHNSON: I hope that the body will be patient with me because I think that this amendment is very important to my district. Madame President, the New Hampshire Ski Industry opposes the new 8 percent entertainment tax on lift tickets. This industry is very sensitive to weather conditions, and an 8 percent entertainment tax will seriously effect the positive growth that we have been nurturing for the past many years. Ski areas and the communities in which they are located are already contributing to this solution, and a disproportionate fashion through the proposed statewide property tax as well as a higher business enterprise tax and business profits tax. This entertainment tax is just one more disproportionate business tax, which targets only a few businesses



in this state and serves only to make our tourism businesses less competitive with our neighboring states. Ski areas are the most important economic engines for tourism during the winter. Ski industry employment exceeds 16,500 jobs. The ski industry spent half a billion during the 1997-98 ski season, and revenues to state and local governments exceed \$21 million for the same period. All of these positive economic indicators will be at risk if the entertainment tax on the ski industry is enacted and New Hampshire loses its competitive edge with surrounding states. Today New Hampshire's ski areas are equal to or enjoy competitive advantage with surrounding states, which are subject to sales taxes. An example, Vermont is subject to a tax on its tickets and customer surveys have demonstrated that this added cost drives skier's decisions to ski in New Hampshire rather than in Vermont. Maine does not subject its ticket sales to a tax, general sales or otherwise. This tax would put New Hampshire lift ticket tax above either Vermont or Maine and significantly reduce our competitive position. Tourists choose carefully where they spend their discretionary income. An 8 percent income tax will not only have a negative impact on consumers impressions of New Hampshire because of the real and perceived impact that New Hampshire is choosing not to be a low tax state, but it will also make us the highest tax ski state in New England. The entertainment tax proposal has not had a public hearing; therefore, is uncertain what the specific impact would be on New Hampshire's ski areas; however, based on ski ticket sales during the 1997-98 ski season, it can be estimated that these sales would count for approximately \$5.2 million under this new entertainment tax scheme. That represents \$5.2 million that definitely will not be spent in New Hampshire businesses. Thank you for your attention, Madame President, for this critical issue for New Hampshire ski industry. I ask that you oppose any entertainment tax that would impact ski areas in New Hampshire.

SENATOR TROMBLY: I rise in opposition of this amendment at this time. When I was in the House of Representatives and served for 14 years on the Environment and Agricultural Committee, every time that there was a bill affecting golf courses that was referred to our committee, the owners of the golf courses used to come in and talk to us about how valuable the golf courses were, and particularly in, urban areas to keeping open space. Quite frankly, I believed what they had to say, yet we are taxing golf courses. I understand the importance of the ski industry in the state of New Hampshire. **TAPE CHANGE** we are going to be whittling away the amount of money for adequacy. The problem with this amendment, and the reason why I oppose it at this time are twofold, for the reason that I just stated, and for the reason that to the extent that it takes one dollar out of this money stream. It is one dollar less for education, for the benefit of one industry. If during the Committee of Conference, if the House sets one up, we can derive the numbers and an alternative funding source that would allow us to look at the individual people taxed here. I would consider it, but I don't think that today, ten after six, that we should start the process of exempting all of the people in this suit. For those reasons, unfortunately, Senator Johnson, I must oppose your amendment.

SENATOR FERNALD: We have before us a proposal that would ask everybody to contribute to education, their fair share, based on their income. That proposal is dead. Any other solution that we choose, any market basket that we put together, is going to pick out certain people for an extra burden. That is where we are. The people that we pick out are all going to scream and

yell. Today it is the ski areas. It will be somebody else tomorrow, if this does not go through. Those who scream should not scream at us because the best solution has been taken away from us as an option. They should scream at somebody else. I don't think that we should start taking people out that scream because we will never have a solution. I oppose this amendment even though I love to ski, and I appreciate where Senator Johnson is coming from.

SENATOR LARSEN: As one of those reluctant members who was not able, even in voting for this package, to pick out certain objectionable features of it, I believe that anyone who agreed on \$825 million for an adequate figure and who voted for HB 112 as it was amended, is also bound by the agreement that raises an adequate amount of money. It is minimally adequate, but if we begin to pick this apart, we truly begin to approach inadequacy. This was the agreement, stick with it. Vote this amendment down.

SENATOR D'ALLESANDRO: I, too, rise against the amendment. We all talked about the adequacy number and the importance of the adequacy number. If you do anything to detract from that, in essence what we are doing is again to lower the bar. We don't want that. I want a solution. Put a solution on the table. As I said previously, everybody doesn't like the solution. Once you start tampering with it, you destroy the spirit of trying to solve the problem, therefore, I rise against the amendment.

SENATOR GORDON: Senator Trombly, do you have any idea how much money this would mean in terms of reducing the adequacy number?

SENATOR TROMBLY: No I don't know an actual figure, but I do know that it goes backwards and not forward. That is my concern, Senator Gordon, that I agree with what Senator Larsen said. We agreed on \$825, some of us think that is incredibly low, this amendment is subtraction not addition and that is why I have to oppose it.

SENATOR JOHNSON: I just wanted to answer Senator Gordons' question. Not having been able to see the amendment until the last minute, I didn't have too much time to put it together, but I believe that the figure is about \$5 million.

SENATOR GORDON: Thank you, Senator Johnson. I am going to support the amendment. Not coincidentally, I have two ski areas in my Senate district. Three actually. The issue is this, whether or not you believe...I think that Senator Larsen is right, if you voted for this package, then I think that you probably have an obligation to vote against this amendment, frankly. But if you didn't vote for this package, and you don't believe that the entertainment tax is a proper way of raising funds, then I would hope that you would vote for this amendment. I am not just concerned about the ski areas, I am also concerned about the golf courses, and I am also concerned about the New Hampshire families being able to take their kids skiing on the slopes in New Hampshire. I am concerned about New Hampshire families being able to take their kids to see UNH, hopefully, the national champion UNH hockey team play hockey at the Whittemore Center, and being able to afford tickets to do that. I would hope that if you voted against this bill, HB 112 as it has been amended, that you would favor this amendment.

SENATOR DISNARD: Senator Gordon, would you believe that you just convinced me that I should not vote for a sales tax?

SENATOR GORDON: I would believe that you believe that.

**Senator McCarely moved the question.**

**Adopted.**

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Fraser.**

**The following Senators voted Yes: Gordon, Johnson, Roberge, Francoeur, Krueger, Brown.**

**The following Senators voted No: F. King, Fraser, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Squires, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Klemm, Hollingworth, Cohen.**

**Yeas: 6 - Nays: 17**

**Floor amendment failed.**

**Ordered to third reading.**

### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in its amendment to the following entitled House Bill sent down from the Senate:

**HB 734-FN-L**, relative to state guarantees of tax anticipation notes issued by municipalities; relative to teacher non-renewals for the 1999-2000 school year; and relative to the transfer of tax liens for the 1999 calendar year only.

### **ANNOUNCEMENTS**

**Senator McCarley (Rule #44):** I would like to say very quickly that I think that people do very honorable things in this body, and I would like to thank Madame President for what she did for us today. Thank you.

**Recess.**

**Senator Blaisdell in the Chair.**

### **RESOLUTION**

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time and that the bills ordered to third reading be read a third time by this resolution and all titles be the same as adopted and that they be passed at the present time and that when we adjourn, we adjourn until Thursday, April 8, 1999 at 10:00 a.m.

**Adopted.**

### **Third Reading and Final Passage**

**SB 18**, relative to the rulemaking authority of the state board of education regarding certain educational personnel.

**SB 22**, relative to the pilot program relative to the administration of medication in residential care facilities.

**SB 25**, expanding the waiver of administration under the law regarding decedents' estates.

**SB 27**, relative to assessment fee schedules for trust companies and banks.

**SB 28**, relative to food production and distribution and food service licensure.



**SB 53-FN**, relative to licensure of physicians providing teleradiology services in this state.

**SB 56**, amending the law relative to who may adopt.

**SB 77**, relative to authorized regional enrollment area schools.

**SB 93**, relative to self-service storage facility liens.

**HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products.

**SB 116**, eliminating straight ticket voting.

**SB 121**, requiring reports to the department of justice following certain DWI arrests and refusals to take alcohol concentration tests.

**SB 137-FN**, relative to use of social security numbers in child support enforcement and in the issuance of driver's licenses.

**SB 138**, relative to joint tenancy with rights of survivorship.

**SB 146**, granting district courts exclusive jurisdiction over actions involving certain real estate purchase deposits held in escrow accounts.

**SB 152-L**, relative to the procedures for establishing a charter school.

**SB 204**, establishing the New Hampshire excellence in higher education endowment trust fund.

**HB 249**, relative to the membership of the rivers management advisory committee.

**HB 734**, relative to state guarantees of tax anticipation notes issued by municipalities; and relative to teacher non-renewals for the 1999-2000 school year.

Senator Johnson moved that the business of the day being completed that the Senate now adjourn until Thursday, April 8, 1999 at 10:00 a.m.

**Adopted.**

**Adjournment.**

*April 8, 1999*

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by Senator Wheeler (**TAPE INAUDIBLE**).

Senator Pignatelli led the Pledge of Allegiance.

## **INTRODUCTION OF GUESTS**

### **REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bills:

**HB 73**, extending the reporting date of the commission to study the effects of and jurisdiction over alternative agricultural products.

**HB 734**, relative to state guarantees of tax anticipation notes issued by municipalities; relative to teacher non-renewals for the 1999-2000 school year; and relative to the transfer of tax liens for the 1999 calendar year only.

Senator D'Allesandro moved adoption.

**Adopted.**

### NOTICE OF RECONSIDERATION

Senator Cohen served notice of reconsideration on HB 112, increasing the tobacco tax and imposing the tax on all types of tobacco products.

### SUSPENSION OF THE RULES

Senator J. King moved that Senate Bill 229 be introduced into the Senate, after the Rules deadline for introduction, referred to committee and laid on the table for printing.

**Adopted by the necessary 2/3 vote.**

### First and Second Reading

**SB 229-FN-L**, relative to the supervision of juvenile delinquents on probation and parole and the operation and organization of the youth development center. Sen. J. King, Dist 18; Sen. Blaisdell, Dist 10; Sen. F. King, Dist 1; Sen. Disnard, Dist 8; Sen. Hollingworth, Dist 23; Sen. Trombly, Dist 7; Rep. Dwyer, Hills 43: **Public Institutions, Health and Human Services**

### COMMITTEE REPORTS

**SB 215**, transferring certain responsibilities for shellfish harvesting and regulation. Environment Committee. Vote 4-0. Ought to Pass, Senator Russman for the committee.

SENATOR RUSSMAN: Senate Bill 215 essentially transfers the ability to deal with the clam flats from the Department of Health and Human Services over to the DES because primarily we are finding that the flats are closed due to various pollution problems, and things of that nature, and that is what DES deals with. DHHS will still continue as the state shellfish authority for shell fishing, meaning that they will be responsible for the licensing, and the shell processors, as defined by the Federal National Shellfish Sanitary Processing guidelines, but DES will decide on the suitability for shell fishing in specific areas. This bill also has the backing of DES and DHHS and the Office of State Planning so we would urge your support of it.

**Adopted.**

**Ordered to third reading.**

**SB 224**, relative to stenographic records of adjudicative hearings before licensing boards. Executive Departments and Administration Committee. Vote 7-0. Ought to pass with amendment, Senator Trombly for the committee.

**1999-0671s**

**10/01**

### Amendment to SB 224

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to stenographic records and availability of transcripts of adjudicative hearings before licensing boards.

Amend the bill by replacing section 1 with the following:

1 Administrative Procedure Act; Contested Cases Before Licensing Boards; Stenographic Record Required. Amend RSA 541-A:31, VII to read as follows:

VII. The entirety of all oral proceedings shall be recorded verbatim.  
*At the request of the party in any disciplinary proceeding before a board responsible for professional licensing or certification, the record of the proceeding shall be made by a certified court ste-*

*nographer at the requesting party's expense. Upon the request of any party made within 60 days after the decision or order, or upon the agency's own initiative, such record shall be transcribed if the requesting party or agency shall first pay all reasonable costs for such transcription. If a transcript is not provided within 45 days of a request to a person who is a party in a disciplinary proceeding before a professional licensing or certification board, the proceeding shall be dismissed with prejudice.*

1999-0671s

#### AMENDED ANALYSIS

This bill requires that a stenographic record be made by a certified court stenographer in an adjudicative proceeding before a licensing board, upon the request of a party to the proceeding, and requires dismissal of a complaint if a transcript is not provided.

SENATOR TROMBLY: Currently certain boards that are facing disciplinary proceedings against the people over whom they have jurisdiction, have nothing but a tape recorded proceeding. Those have to be transcribed, and often those tape recordings are garbled, or there are silences, which does not help someone who is facing a disciplinary proceeding on appeal of the board's decision. This legislation would require that a party could ask for a court-certified stenographer to take verbatim minutes of the hearing. If within 30 days of the hearing either party requests that the stenographic notes be transcribed, they would be transcribed. Further, and I think very importantly, if the person facing the hearing does not receive the verbatim transcript within 45 days of the request, then the proceeding would be dismissed. This was the result of a very tragic case where a person was facing a disciplinary proceeding and could not, despite many requests, get a verbatim transcript of the proceedings against him. I would ask that you pass this bill as amended. Thank you.

**Amendment adopted.**

**Ordered to third reading.**

**SB 33**, requiring workers' compensation indemnity benefits to be paid on the same date each month. Insurance Committee. Vote 5-0. Inexpedient to Legislate, Senator Fraser for the committee.

SENATOR FRASER: Mr. President, with the concurrence of the bill's prime sponsor, Senator Trombly, SB 33 was voted out of the committee unanimously as inexpedient to legislate. The issue of promptness of workers' compensation benefit payments will no doubt resurface in a future session, but both the sponsor and the committee felt that a motion of inexpedient to legislate was appropriate.

**Committee report of inexpedient to legislate is adopted.**

**SB 55**, relative to health insurance for persons who use tobacco products. Insurance Committee.

**MINORITY REPORT:** Ought to Pass, Senator Francoeur for the committee. Vote 1-7

**MAJORITY REPORT,** Inexpedient to Legislate, Senator Fraser for the committee. Vote 7-1

SENATOR FRASER: Mr. President, SB 55 would create an insurance environment where health insurance carriers could divide the members into smokers and nonsmokers, and charge different premiums for each group. While the committee thought that this was an interesting idea



in theory, it brings up a whole host of problems, both practical and conceptual. For example, how truthful can we expect insurance subscribers to be when they are applying for coverage if they know that their premiums could be increased if they admit to tobacco use. What distinction should be made between someone who smokes four cigarettes a day versus someone who smokes two packs a day? Will employers screen job applicants, or perhaps not hire smokers if it might cost the employers more to insure them? How do you protect someone's privacy and still ascertain whether or not they use tobacco? The majority of the committee, Mr. President, reported this bill out as inexpedient to legislate.

**SENATOR FRANCOEUR:** Mr. President, the state of New Hampshire is about to receive millions of dollars from the settlement with tobacco companies. New Hampshire won the settlement based on the argument that state incurred health costs that resulted from smoking; therefore, the state deserves some financial recompense. This settlement represents clear acknowledgement of a directly causal relationship between smoking and health care costs. With such an acknowledgement now a statement of public policy, it is only fitting that people purchasing health insurance have access to the same advantage as the state. Senate Bill 55 would reward those people who choose not to use tobacco products. It isn't a case anymore of the public unaware of the dangers of smoking. It is the truth universally acknowledged that smoking can be harmful to your health. People who pay for health insurance that choose not to smoke are essentially subsidizing coverage for those who do. It is difficult to see how that is fair. This bill is not intended to penalize a health condition, it is designed to reward a choice. It is based on evidence and precedent. Senate Bill 55 doesn't require that insurers adjust premiums. It doesn't require any kind of testing. When you apply for car insurance, your rate is based on part of the number of miles that you tell them that you drive for a week. No one follows you around to make sure that you are telling the truth. No one checks your odometer. If you drive a red sports car, you are charged a higher rate than if you drive a mini van. This instance it is all right to adjust your rate based on individual circumstances and decisions that you make. Senate Bill 55 provides that opportunity and I urge you to vote this ought to pass.

**Question is on the minority report of ought to pass.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Brown.**

**The following Senators voted Yes: Roberge, Francoeur, Krueger, Brown, Russman.**

**The following Senators voted No: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Squires, Pignatelli, Larsen, J. King, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.**

**Yeas: 5 - Nays: 19**

**Motion failed.**

**Question is on the majority report of inexpedient to legislate.**

**Committee report of inexpedient to legislate is adopted.**

**SB 58, allowing clinical mental health counselors to obtain third party payment for services rendered which would otherwise qualify for such payments. Insurance Committee. Vote 7-1. Ought to Pass, Senator Wheeler for the committee.**

SENATOR WHEELER: Senate Bill 58 does include the profession of mental health counselors to those groups eligible for third party reimbursement. Last year the legislature licensed five professional groups in the field of mental health. These five professional groups do represent some different types of training and specialization, but they share very similar standards of training and practice, as our licensing of them as a group indicates. Currently, only three out of the five are eligible for the third party reimbursement. Senate Bill 58 corrects this disparity in the law with regard to clinical mental health counselors. It does not mean that anyone treating with a mental health counselor will be covered. It only means that if a particular type of a treatment is deemed eligible for coverage by the insurance company, this group of professionals can be the provider as their sister professions currently can. The bill is important because it expands consumer choice. The average person is unaware of the distinctions between, for example, a clinical social worker and a mental health counselor. They know only that when they find a therapist with whom they feel comfortable, that person has a good chance of helping them. To be told by their insurance company, that because of unclear or arbitrary distinctions, they have to find someone else, is not productive to their treatment. Senate Bill 58 is also about fairness to the profession. We all know how eligibility for third party reimbursement can affect hiring decisions made by mental health agencies. Senate Bill 58 does not expand coverage to include new treatments, and it should not effect costs at all. It just helps the person who requires mental health care to find the practitioner who works best for them. I urge you to support SB 58.

**Adopted.**

**Ordered to third reading.**

Senator Francoeur is in opposition to SB 58.

**SB 63**, relative to applicability of workers' compensation to persons employed by 2 or more employers. Insurance Committee. Vote 8-0. Inexpedient to Legislate, Senator Squires for the committee.

SENATOR SQUIRES: This bill addresses an issue which is related to the change in the business climate of our region, our state and the nation. The problem is that increasing numbers of people work in two geographic locations. The complication arises when both of these sources of employment are covered by workers' compensation. That is, if you were employed in Massachusetts, but you worked part-time in New Hampshire, what happens if you get injured? In which state do you claim workers' compensation benefits? That is important, because workers' compensation benefits are tied to salary. What the bill says in effect is that if you worked in state A but also worked in New Hampshire, state b, if you were injured, you would be compensated at the highest level of your employment. The difficulty is that there has been no premium paid for that in the state of New Hampshire, because there is no regional arrangement, and because of these factors which are changing the way in which we live and work, while the committee recognized the problem, we think that it is not right to inflict a potential expense of considerable magnitude upon the state's workers' compensation fund towards which contributions have been made at your state level of reimbursement, and, thus the bill is inexpedient to legislate. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 85-FN**, including the judiciary as a public employer under the public employees labor relations act. Insurance Committee. Vote 7-1. Ought to Pass, Senator J. King for the committee.

**SENATOR J. KING:** Senate Bill 85 adds the state Judiciary to the definition of public employer under the Public Employee Labor Relation Act. It does not require the judicial branch employees form a union, but like other public employees in the state, it allows them the right to choose whether they want to do so. In an earlier ruling, the Public Employee Labor Relation Board found judicial employees to be covered under RSA 273-A. The Supreme Court overturned the decision, citing the lack of expressed will by the legislature. This is the expressed will by the legislature that would allow it. Thank you very much.

**Adopted.**

**Ordered to third reading.**

Senator Francoeur is in opposition to SB 85-FN.

**SB 102**, relative to premium tax penalties. Insurance Committee. Vote 8-0. Ought to pass with amendment, Senator Fraser for the committee.

**1999-0740s**

**01/09**

#### **Amendment to SB 102**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to payment of the premium tax.

Amend the bill by replacing all after the enacting clause with the following:

1 Premium Tax; Estimated Liability. Amend RSA 400-A:32, II to read as follows:

II. On or before March 1, June 1, September 1, and December 1 of each year, every authorized insurer required to pay a tax in accordance with RSA 400-A:32, I shall pay to the insurance commissioner an amount equal to 1/4 of the previous calendar year's tax paid pursuant to said paragraph; ***provided, however, any authorized insurer having an estimated liability of \$100 or less for each quarter shall make payment in full on March 1.*** These payments shall be considered as a partial payment of the tax upon the business done in the state during the calendar year in which the payment was received.

2 Effective Date. This act shall take effect January 1, 2000.

**1999-0740s**

#### **AMENDED ANALYSIS**

This bill requires certain insurers to make payment of the premium tax due in full by a certain date.

This bill is a request of the insurance department.

**SENATOR FRASER:** Mr. President, SB 102 makes one change in the existing statute on the premium tax. Some companies estimate their tax liability and make quarterly payments. If a company's tax liability is below a certain level, the company is subject to a minimum of \$200 annually. The quarterly payments therefore, can be as low as \$50. This causes some administrative headaches for the Insurance Department, especially if the company fails to make a payment and the department personnel have to take measures and spend money to track down the payment. Senate Bill 102 as



amended, requires that these companies make either one annual payment or two payments of not less than \$100. It is a reasonable measure and I would urge the Senate to support SB 102 as amended.

**Amendment adopted.**

**Ordered to third reading.**

**SB 103**, making certain changes in the insurance laws. Insurance Committee. Vote 8-0. Ought to pass with amendment, Senator Fraser for the committee.

**1999-0739s**

**01/09**

### **Amendment to SB 103**

Amend the bill by replacing section 2 with the following:

2 Deleting Specific Dates and Certain Information. Amend RSA 420-I:4 to read as follows:

420-I:4 Reports to Insurance Commissioner. [~~On or before March 1 and September 1 of each year,~~] Each managed care insurer shall file a report in form and containing such information as the insurance commissioner prescribes *when requested by the commissioner*. [~~Such report shall include the name of the managed care insurer, its affiliates, a description of each exclusive arrangement to which it is a party and, as applicable, the date on which exclusive arrangement has been or will be terminated.~~]

**1999-0739s**

### **AMENDED ANALYSIS**

This bill:

(1) Deletes the specific due dates and certain information for reports required to be filed by managed care companies with the insurance commissioner.

(2) Makes a technical correction to the law regulating foreign insurance companies.

(3) Makes certain personnel corrections.

(4) Clarifies the procedure pertaining to books, records, and other documents when an insurance company is undergoing examination

SENATOR FRASER: Mr. President, SB 103 is another housekeeping bill which I have introduced on behalf of the Insurance Department. It makes four unrelated changes. One is merely typographical. The second deletes language relating to certain types of exclusivity contracts that have been phased out by law. A third change adds back into language that had been inadvertently dropped, regarding examination and prohibiting insurance department personnel from removing records from an insurance company. The fourth change is a salary classification for two positions resulting in a net gain to the state of a few thousand dollars. The committee was unanimous in recommending this bill as ought to pass as amended.

**Amendment adopted.**

**Ordered to third reading.**

**SB 104**, making a variety of changes in certain insurance laws. Insurance Committee. Vote 8-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: Mr. President, SB 104 is another bill that I introduced on behalf of the Insurance Department. It makes a few unrelated

changes to insurance statutes, and to update them in some cases and to make them consistent in other cases. Briefly, the bill deletes preferred provider organizations from those groups exempt from the licensure requirement for the Medical Reutilization Review Organization. It also incorporates by reference, the standards of NCQA and URAC for Utilization Review Organizations. It also deletes a temporary certificate provision for **TAPE INAUDIBLE** care facilities, since by now all such facilities should have obtained regular certificates of licensure. It also clarifies a procedure to be followed if a group life insurance policy is terminated. Senate Bill 104 as requested by the Insurance Department was agreed to by the Insurance Industry representatives. The Insurance Committee was unanimous in voting this as ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 105**, relative to continuation of coverage of health insurance. Insurance Committee. Vote 8-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: Mr. President, SB 105 is still another bill that I introduced on behalf of the Insurance Department. It makes some changes so far as continuing coverage provisions. Most of the changes are strictly to bring New Hampshire into compliance with the COBRA provisions. One substantive change rescinds the eligibility for coverage for what is known as the group I employer. These are self-employed people, where the employee and the employer are the same. In such cases, the loss of coverage is not a decision imposed on an employee by an employer causing the employee to suddenly need the protection afforded by COBRA. The Insurance Department felt that requiring all small group insurers to extend coverage for these situations. **TAPE INAUDIBLE** Self-employed individuals can easily be able to afford and find coverage in the small group market. The committee was unanimous in supporting this bill as ought to pass.

SENATOR DISNARD: Senator, on the first page, line two and three. An individual who has been employed for at least six months is crossed out. Does that mean that people could lose their coverage?

**Recess.**

**Out of Recess.**

SENATOR FRASER: Senator, I believe that that language is now exactly what is in COBRA.

SENATOR DISNARD: Thank you. I appreciate it.

**Adopted.**

**Ordered to third reading.**

**SB 106**, relative to continuing education for insurance adjusters. Insurance Committee. Vote 5-0. Inexpedient to Legislate, Senator Fraser for the committee.

SENATOR FRASER: Mr. President, this was the last bill that I introduced for the Insurance Department. After I introduced the bill, it became apparent that the law that is on the books today, having to do with continuing education for insurance adjusters, was appropriate. By the time that I was notified, the bill was already in the process of being printed. We now ask the Senate to vote this bill as inexpedient to legislate.

**Committee report of inexpedient to legislate is adopted.**

**SB 114**, relative to health care carrier disclosure of third party liability. Insurance Committee. Vote 8-0. Ought to pass with amendment, Senator McCarley for the committee.

**1999-0738s**

**05/10**

### **Amendment to SB 114**

Amend the bill by replacing section 4 with the following:

4 Disclosure. Amend RSA 420-G:11, II to read as follows:

II. All health carriers shall electronically provide ~~[data on claims and subscribers]~~ to the department of health and human services~~[-in accordance with rules adopted under RSA 126:27]:~~

(a) Data on claims and subscribers filed in accordance with rules adopted under RSA 126:27; and

(b) Cross-matched claims data on requested policyholders, and subscriber information necessary for third party liability for benefits provided under RSA 167, filed in accordance with rules adopted under RSA 167:3-c.

SENATOR MCCARLEY: Health insurance carriers have a clear legal requirement to share information with the Department of Health and Human Services to ensure third party reimbursement in connection with Medicaid claims; however, there currently is no adequate system in place to accomplish the data matching that would bring this about. Under SB 114, a system will be put into place to allow electronic data matching of relevant claims records between HHS and other insurers. With proper third party reimbursement, the state could see substantial savings in Medicaid claims paid. The data matching provisions of SB 114 do not include sharing any medical information, therefore, there are no privacy issues involved and no additional staff will be necessary for HHS to do the matching. The Insurance Committee recommends this bill as ought to pass as amended. Thank you.

**Amendment adopted.**

**Ordered to third reading.**

**SB 173-FN**, relative to optional allowances for beneficiaries of the New Hampshire retirement system members. Insurance Committee. Vote 5-0. Ought to Pass, Senator J. King for the committee.

SENATOR J. KING: Senate Bill 173 clarifies a nomination of a spouse and or children as beneficiaries under an optional retirement allowance. Also, in a situation where the optional allowance was terminated due to remarriage of a former spouse, SB 173 clarifies when a member's converted allowance is payable. There is no cost to the state or local communities since this legislation only clarifies existing procedures and calculations. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 177**, allowing marriage and family therapists to obtain third party payments for services rendered which would otherwise qualify for such payments. Insurance Committee. Vote 7-1. Ought to Pass, Senator Wheeler for the committee.

SENATOR WHEELER: Mr. President, SB 177 is a companion bill to the one that we just passed, SB 58. Senate Bill 177 gives the fifth of the five licensed professional groups in mental health care. The mar-



riage and family therapist's eligibility for third-party payment. For all of the same reasons, I urge you to support this bill, which brings parity to the profession and gives consumers a wider ability to enter into therapy with the practitioner of their choice. Marriage and family therapists are subject to very similar standards of training and practice as their sister professions. It is only appropriate to include as eligible for third party reimbursement for services for them for these reimbursements for services that would otherwise qualify. The Insurance Committee recommends the passage of this bill and I urge your support. Thank you.

SENATOR F. KING: Senator Wheeler, I was struck by SB 58 and also by this bill about a lack of a fiscal note. Is there no fiscal impact with this legislation?

SENATOR WHEELER: We don't believe, Senator, that there would be a fiscal impact for this. Medical health care is already covered by your policy. It just expands the kind of professional that you could see.

SENATOR F. KING: There will be no cost to the state government, the municipalities?

SENATOR WHEELER: We don't believe so.

**Adopted.**

**Ordered to third reading.**

Senator Francoeur is in opposition to SB 177.

**SB 182-FN**, relative to eligibility for ordinary death benefits under the New Hampshire retirement system. Insurance Committee. Vote 5-0. Ought to pass with amendment, Senator Fraser for the committee.

**1999-0702s**

**10/09**

### **Amendment to SB 182-FN-LOCAL**

Amend the introductory paragraph of RSA 100-A:9, III as inserted by section 1 of the bill by replacing it with the following:

III. If the member *did not have at least 10 years combined creditable service and* was not eligible for service retirement at the time of death, there shall be payable to the member's [widow] *spouse* or the member's designated beneficiary or beneficiaries, if other than [his widow] *the member's spouse*, if living, otherwise to the member's estate, a lump sum equal to the greater of either:

SENATOR FRASER: Mr. President, SB 182 makes changes to the benefit payments for the surviving spouse of a member of the New Hampshire retirement system. Currently, in order for the surviving spouse to receive any death benefit, the member had to have been eligible for service retirement. Senate Bill 182 allows the benefits to be paid, if the member had ten years of credible service at the time of the death, even if he or she was not eligible for service retirement. The benefit amount paid in monthly installments would be 50 percent of the amount that the member had accrued at the time of his or her death. A second change contained in this bill concerns members who have neither reached service retirement, nor have ten years of credible service. In such cases, the beneficiary will receive either a lump sum of \$3,600, or the amount of compensation that the member had earned in addition to the statutory amount under RSA 100-A:11. The same benefit structure applies if the member had ten years of service or was eligible for retirement

but designated beneficiary other than his or her spouse. The Insurance Committee was unanimous in voting this bill as ought to pass as amended.

**Amendment adopted.**

**Ordered to third reading.**

**SB 186-FN**, relative to additional cost of living adjustments for certain retired group II firemen. Insurance Committee. Vote 5-0. Ought to Pass, Senator J. King for the committee.

**SENATOR J. KING:** This bill provides an additional cost of living adjustment for retired group II firefighters whose annual retirement benefit is less than \$17,700. It will affect 300 retired firefighters who both need and deserve the additional COLA. Some less than a \$1000 as a retirement benefit. It will be funded from the special account that is part of the New Hampshire Retirement System. The special account that comes from the firemen's special account, not any of the others. The only cost to the state is \$7,500 to write the program necessary to administer this program. I commend the fire department and all of the people for willingly sharing some of the money that they have in their special fund today so that their brother firefighters can get a little more money to spend while they are still alive. Some of the people that were testifying at the hearing were 85 and 86 years old. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #24).**

**Recess.**

Senator Cohen in the Chair.

**SB 187-FN-L**, relative to payment of group health insurance premiums for eligible retired teachers in the New Hampshire retirement system. Insurance Committee. Vote 5-0. Ought to pass with amendment, Senator Blaisdell for the committee.

**1999-0703s**

**10/09**

### **Amendment to SB 187-FN-LOCAL**

Amend RSA 100-A:53-a, I as inserted by section 4 of the bill by inserting after subparagraph (f) the following new subparagraph:

(g) Any person who has completed no less than 20 years of group I teacher creditable service and who retired prior to attaining the age of 60, and who attains the age of 60.

**SENATOR BLAISDELL:** For 30 years I've been concerned about the financial plight of New Hampshire's retirees. This bill helps one group of retirees who are part of the New Hampshire Retirement System: the teachers. There was a special account in the retirement system set up by legislation in 1983. I believe that Senator Bartlett and myself were responsible for that. This special account funds COLAS and other benefits for some state retiree groups like police and firefighters. The retired teachers have been very smart and very frugal with their portion of the special account funds. It shouldn't surprise us that we can still learn a thing or two from our teachers, whether they're retired or not. Instead of requesting any benefits beyond just the COLA, they let the money in their fund accumulate to the point where they could now make this request of the legislature. The fund currently has enough money to cover the cost of the bill, plus COLAS for the next four years, just with

the money that's in the fund now. I believe that that fund on the teacher's part is about \$164 million. Many teachers, in addition to being under Medicare when they reach age 65, also have private insurance. Senate Bill 187 provides money for health insurance to every teacher who is retired now, and who retires over the next five years. The money goes in the form of a subsidy to the private plans that the retired teachers use for insurance. This is a good bill, and the teachers deserve it, they saved for it, they should get it now. Health care is a major concern for older people, and this bill provides a good solution. The Insurance Committee voted it out unanimously, ought to pass as amended.

**Amendment adopted.**

**Referred to the Finance Committee (Rule #24).**

**Recess.**

**Senator Blaisdell in the Chair.**

**SB 205-FN**, expanding medical coverage to pay dental assistance for adults on medicaid. Insurance Committee. Vote 7-1. Ought to pass with amendment, Senator Wheeler for the committee.

**1999-0746s**

**05/10**

#### **Amendment to SB 205-FN**

Amend the bill by replacing section 3 with the following:

3 New Paragraph; Types of Dental Assistance Covered. Amend RSA 167:6 by inserting after paragraph VII the following new paragraph:

VIII. Persons deemed medically and categorically needy shall be eligible for dental assistance including emergency dental care for relief of pain, bleeding and infection, selected preventative and restorative procedures designed to cease disease progression, and necessary diagnostic and consultative services. Such services shall include complete full denture and denture repair coverage. The annual per person benefit maximum shall be \$400. In addition to the annual benefit, one full set of dentures per lifetime, with lifetime repairs, shall also be covered.

SENATOR WHEELER: This is truly an important piece of legislation that provides a reasonable level of assistance to people who really do need it. It is not exorbitant. In fact, the amendment limits its scope considerably. Currently Medicaid provides dental assistance only to children, adults are on their own, although they can have extraction and relief of pain. We have heard stories in previous years about people spending months in bed rather than having their last tooth extracted, hoping that their infection would go away, and not being able to get any treatment for that infection. Under SB 205 eligible adult Medicaid recipients would be covered for some preventive, which is what we really need and restored procedures up to a maximum of \$400 a year. This is in the amendment. Including one set of dentures and the repair of those dentures per lifetime. There are two major reasons for supporting this bill. First, it makes good health sense. Although the mouth is generally treated by the insurance community as if it somehow isn't part of the human body, we all know that it is. Poor dental care can become a serious health problem. Second, recent changes in the welfare laws require adults to find work. While I fully support this idea, the range of jobs open to someone who has very bad teeth or even no teeth, is very limited. A



lot of these jobs are in the service sector, and people are not able to be hired if they don't have teeth. During the hearing we heard really moving testimony about people who wanted to work and who were qualified to work in retail or in a restaurant, but they couldn't get those jobs because of bad teeth or no teeth. It would improve these people's job opportunities immensely, to receive the dental care that would literally enable them to face the world with a smile. I should mention that this bill has been passed by both chambers in a prior session, but was vetoed by then, governor Merrill. So we are on record as a legislature of supporting this very important policy. The Insurance Committee voted this bill as ought to pass as amended and I urge your support.

**Question is on the committee amendment.**

**A roll call was requested by Senator Trombly.**

**Seconded by Senator J. King.**

**The following Senators voted Yes: F. King, Gordon, Fraser, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Squires, Pignatelli, Larsen, Krueger, Brown, J. King, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.**

**The following Senators voted No: Johnson, Roberge, Francoeur.**

**Yeas: 20 - Nays: 3**

**Amendment adopted.**

**Referred to the Finance Committee (Rule #24).**

Senator Russman is in favor of committee amendment on SB 205.

**HB 227**, establishing a committee to study the maintenance of voter checklists. Public Affairs Committee. Vote 6-0. Ought to Pass, Senator Trombly for the committee.

**SENATOR TROMBLY:** Mr. President and members of the Senate, HB 227 will establish a study committee to study the maintenance of voter checklists in particular interest to the committee, was that the study committee would establish the procedures that will be followed for the ten year purge, and the procedure to use to remove names from the checklists individually. As you know, the maintenance of checklists varies greatly from town to town, city to city, ward to ward within the state. We feel that this study committee might be able to recommend some sort of consistency in the maintenance of checklists and we ask that you pass this bill. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 253**, allowing ballots to be examined and counted prior to the opening of polls on election day. Public Affairs Committee. Vote 5-0. Ought to Pass, Senator Trombly for the committee.

**SENATOR TROMBLY:** Currently prior to the ballots need to be counted when they are received from the secretary of state, and the law says that they have to be counted at the opening of the polls which no moderator in this town does, because what it requires is that you open the polls at seven or eight or nine or whatever and then you stop and count the ballots, and then allow people to vote. This will allow the town clerk and associated elections officials to, upon proper posting, open the seal,

count the ballots, and then on Election Day, the polls can open and the people can vote exactly as the town has voted at the appropriate time. I would ask for your support on this minor-technical amendment, but very important to the election laws.

**Adopted.**

**Ordered to third reading.**

**SB 200**, relative to child care licensing procedures. Public Institutions, Health and Human Services Committee. Vote 6-0. Ought to Pass, Senator Gordon for the committee.

**SENATOR GORDON:** Mr. President, I speak on behalf of the committee in support of SB 200. Two years ago a study committee on daycare licensing was established. In its final report, the committee made recommendations for updates to regulatory rules and changes to improve childcare licensing. Some of these recommendations are incorporated in SB 200. Throughout the bill, the phrase 'daycare' has been changed to read "child care." Senate Bill 200 also allows individuals administering child care within private homes to have up to three children other than their own children, children related to them, or children residing with them, provided that the total number of children present does not exceed six, and there are no more than four children under the age of three. The bill also allows the state to deny childcare licenses to individuals who have committed felonies. Current law only allows such denial when a violent crime has been committed. Under current law a person convicted of distributing drugs is not covered. Senate Bill 200 would correct this obvious problem. Finally, this legislation emphasizes the importance of having high standards for quality childcare, care that is safe, healthy and monitored, and care that promotes the intellectual, emotional and social growth for the children of New Hampshire, therefore, I urge you to pass SB 200. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 47-FN**, relative to compensation for time lost by fish and game conservation officers for injuries received in the line of duty, and restoring certain leave time for a conservation officer injured while on duty on August 19, 1997. Wildlife and Recreation Committee. Vote 5-3. Ought to Pass, Senator D'Allesandro for the committee.

**SENATOR D'ALLESANDRO:** This bill has two parts. The first part of the bill provides conservation officers with the same benefits as state troopers on the grounds that they are also uniformed law enforcement officers who are frequently at risk of injury. This means that conservation officers injured in the line of duty will not have to use their sick and vacation time in order to be compensated. Conservation officers undertake search and rescue missions often in severe weather conditions. Once they put on their uniforms, badges and their firearms, they are obliged to protect all citizens and enforce the law. In some areas, like unincorporated townships, they may be the only law enforcement officers. Conservation officers are certified police officers who completed the same training and reach the same standards as other police officers. They are entitled to the same benefits. The second part of this bill restores the leave time taken by conservation officer Wayne Saunders to recover from gun shot wounds he suffered at the hands of Carl Drega. Officer Saunders returned to duty sooner than his doctor wished because he had exhausted

his sick and annual leave. This is simply not fair. If the first part of this bill had been on the books, the second part would be unnecessary. A majority of the committee recommends ought to pass.

**Adopted.**

**Referred to the Finance Committee (Rule #24).**

**SB 160**, establishing a committee to study and identify or establish the duties of the fish and game commission. Wildlife and Recreation Committee. Vote 7-0. Ought to Pass, Senator Roberge for the committee.

**SENATOR ROBERGE:** Mr. President and members of the Senate, this bill establishes a study committee to specify and define the duties and responsibilities of the fish and game commission. The fish and game statute, RSA 206, makes no mention of what the commission is actually supposed to do. Individual commissioners have expressed frustration that their duties and responsibilities are not clearly defined. There is also some concern among commissioners about their potential liabilities. The fish and game commission welcomes the bill, in fact, the commission has scheduled a managerial retreat to begin considering the issues. The commission will cooperate completely with the study committee. The study committee will encourage participation of the general public, particularly people who are not hunters or fishermen, but are interested in the conservation and habitat of wildlife. The committee unanimously recommends ought to pass.

**Adopted.**

**Ordered to third reading.**

## **SPECIAL ORDER**

**12:01 p.m.**

**SB 80**, relative to adding the name of Martin Luther King, Jr. to Civil Rights Day. Public Affairs Committee. Vote 5-2. Ought to Pass, Senator Russman for the committee.

**SENATOR RUSSMAN:** As you know, this would change the name of the holiday celebrated on the third Monday of every January from Civil Rights Day to Martin Luther King, Jr. Civil Rights Day. A lot has been said about this and I don't intend to make it a long speech. It is time that we do this. It is time that New Hampshire steps up to the plate and recognizes the principles of equality and non-violent social change that Dr. King espoused. Certainly it would be appropriate for the New Hampshire Senate to go on record strongly, as we have before, urging the House in a strong vote to pass this bill, and do the right thing for New Hampshire, and to do the right thing for the country, and to do the right thing for our Black brothers and sisters. Thank you.

**SENATOR BELOW:** I rise in support of the pending question. I think that with the expectation that this bill may finally become law, I suspect that most of us hope that this will be the last time this body takes up this issue. I would like to share with you a little tiny bit of history that I think speaks volumes as to why this is the right thing to do. My mom grew up in the south, and my father was ordained as a southern Baptist minister and entered the U.S. Navy as a chaplain during WW II. I, myself was born in Memphis, Tennessee in 1956, while my father was stationed at the Memphis Naval Air Station. They knew all too well the gross racism and injustice that was prevalent, particularly in the south during that time



period. Growing up, I knew that they had profound respect and admiration for Dr. King. I remember listening to his "I have a dream" speech with my parents. The late 60's found the nation, really torn somewhat asunder, really divided over issues of social change and violence in the nation in the international realm. In the summer of "67" the worst urban riots in the nation erupted. 1968 was greeted with some of the worst violence in the Vietnam War. That is where my father was at the time. He was chief of chaplains for the third marine amphibious force where he supervised about 90 chaplains in the field throughout the northern third of Vietnam. In April, 31 years ago, Dr. King was in Memphis, Tennessee to support the sanitation workers strike. It was a strike over a very basic issue, a living wage. Many of the garbage workers, although they had worked full time, didn't have enough income to support their families, and found themselves on welfare. So they had a simple slogan which was "I am a man." The night before Dr. King was shot, he spoke about how he had lost his fear of death and how he had reached the mountain top and seen the promised land, the vision of a society in which there was equal justice, dignity and opportunity for all people, and how he saw that vision proceeding with or without his continued physical presence. In my father's role as a chaplain, he had the duty and honor to eulogize Dr. King, I think 31 years ago to this day, or within a couple of days. I would just like to share with you an excerpt from that eulogy which was broadcast throughout South Vietnam on armed forces radio. "Early April 1968, nine Vietnam. Martin Luther King, age 39, America's voice for the wisdom of non-violence in the civil rights struggle, was killed by an unknown assailant last Thursday night in Memphis, Tennessee. Today, men of conscience around the world mourn his death. In a real sense, a part of every one of us dies whenever and wherever any other man dies who espouses the cause of freedom and dignity." So a part of us died with him. But there is a larger question. Martin Luther King believed that violence would only breed violence in return — and in the violence of racial strife there would be no freedom or brotherhood for anyone. He was not the only man who has believed this. Jesus, 2,000 years ago, knew that if mankind ever achieved any sense of brotherhood, it would have to be done through love and not hate. He bet his life on that, and in one sense he lost it, because they crucified him. But in a larger sense, he won. Because throughout the intervening centuries, there have been men and women who have seen in Jesus, in his pattern of behavior and love, the only redemptive answer for the hatred and discord and strife in the world. Martin Luther King has been such a man. He died in that faith. The dream of Martin Luther King is still America's dream. Not yet fully achieved — this we all acknowledge and confess, but the way in which we attack the problems before us, creatively or destructively, we shall nobly save or we shall meanly lose the last, best hope on earth. Today I will take my place beside the Martin Luther Kings, those who have walked the earth in love, in hope, in honor, in dignity and in the full flower of their humanness. Let us today, join the other 49 United States and honor Martin Luther King for the great leader and martyr that he was. "America's voice for the wisdom of non-violence in the civil rights struggle." The key to King's message was that we must break the cycles of violence, racial violence, urban and rural violence, criminal violence, domestic violence, international violence and civil war, the patterns of hate and revenge that restrain and defeat the realization of our American dream of a world of civilized democracies in which the personal freedom, dignity and civil rights of each and every individual human being are respected, nourished and cherished. Thank you.

SENATOR HOLLINGWORTH: A few months ago Dick Amadon came to my office. He said, "Senator Hollingworth, for years I thought that Civil Rights Day was good enough, but I attended a service on January 17 and my minister spoke, and I want you to have the excerpts from his sermon, because he changed me and changed my mind about whether Civil Rights Day was enough. I would like to read just a bit of what the sermon said, because I think that it really does make a difference, and he says it quite well. He says, "I personally will not celebrate Civil Rights Day even though it is what the state of New Hampshire continues to call tomorrow's holiday. I simply cannot get very excited to remember all of those people and causes who, in ways abstracted, have helped win civil rights for those who have been persecuted and disenfranchised. Don't get me wrong, civil rights are a fundamental importance for the good of all, but the necessity for ensuring civil rights for certain segments for our society, as important as they are, do not capture the fullness of Martin Luther King's life in teaching. Martin Luther King did not merely stand for the acquiring of civil rights for his African brothers and sisters. He was not merely concerned with the basic needs of certain groups of outcast groups, although in that in of itself would have been a noble pursuit. King was concerned with the redemption of a nation. For King, God's love did not stand at the edge of one's own group or people, rather God's radical sacrificing love extended to encompass even the worst of his enemy. King captured the imagination of so many people because the movement that he embraced did not only declare that they would do battle for injustice, but that it would be for redeeming and transformed friends and foes alike through sacrificial love." Here are some of King's own words on that matter. "To our most bitter opponents we say we will match your capacity to inflict suffering with our capacity to endure suffering. We shall meet your physical force with soul force. Do to us what you will, and we shall continue to love you. We cannot in all good conscience obey your unjust laws, because non-cooperation would be as much a moral obligation as cooperation would. So, throw us in jail and we shall still love you. Send your hooded perpetrators of violence in our communities after midnight hours and drive out on some wayside road and leave us half dead and we will still love you. Beat us and leave us half dead, and we shall still love you. Be ye assured that we will wear you down by a capacity to suffer. One day we will win freedom. We will not only win freedom for ourselves. We will so appeal to your heart and your conscience that we will win you in the process. Our victory will be a double victory. Love is the most durable power of the world. This creative force, so beautifully exemplified in the life of our Christ, is the most potent instrument available in mankind's quest for peace and security. Jesus eternal right, history is replete with the bleached bones of nations that refuse him. May we in the 20<sup>th</sup> century hear and follow his words before it is too late. May we solemnly realize that we shall never be true sons of our heavenly father until we love our enemies and pray for those who persecute us." He continues..." The problem with many of the groups who have sought justice since the end of civil rights day, a problem which still plagues our social and political life, is special interest has replaced universal interest most of the time. That is why most groups, no matter how noble their aim, have failed to capture the moral imagination of our country as Martin Luther King, Jr. did so two score years ago. King captured our imagination because he professed and lived a calling that went beyond the mere tit-for-tat politics. His movement manifested the notion of sacrificial love. Sacrificial love is not only a deeply held Christian notion, but one which still resounds with a sometimes great

and sometimes struggling nation. One must seek goodwill not only for ones friends, but especially, one must seek goodwill for those whom we do not appear to seek the same for us. Our nation made great strides when it struggled to acknowledge and defend the civil rights of African Americans decades ago, but more than that, through the movement lead by Martin Luther King, Jr., we touched it, but just for a moment, our great calling as the people, a faith and as a nation. It is for but a moment in our history, we captured a vision of civilization which so long ago deeply despise, and because of our differences we saw in King, those who followed him, African American citizens who had every reason in the world to despise and reject most of the rest of us, but instead, choose to embrace us and to embrace this nation. We are all the better because of their choice rooted in love and unmerited grace. That is why tomorrow I will celebrate and remember the life and legacy of Martin Luther King." I think that is one of the reasons why we, New Hampshire, should join the rest of the nation in celebrating Martin Luther King Day.

SENATOR DISNARD: It is with difficulty that I rise to speak. I do not speak in the manner to influence any votes; however, I speak to you as an individual who does not tell racial jokes or ethnic jokes. I also speak to you as a combat veteran and Purple Heart holder from World War II in Korea. In all loyalty to the armed forces staff who served in Vietnam and certain remarks made by Dr. King. I cannot in good conscience vote for this. I am not saying this to influence any of your votes.

SENATOR FERNALD: This is an issue of how we remember the defining moments of our history and how we teach them to our children. One defining moment was when we gained independence. It was a time of great people. Thomas Jefferson, Benjamin Franklin, Thomas Paine. But there was one who was head and shoulders above all of the others. One who risked everything in that cause and one who we revere above all the others of that era. That is George Washington. I know that congress in wisdom has changed Washington's birthday to the third Monday of February and called it President's Day to suggest that we are honoring Millard Fillmore or Chester Arthur, but the American people are not fooled. We still call it Washington's birthday, and the calendar still reflects it as Washington's birthday, because he was the greatest American of that era. Another defining moment of our history was the civil rights era, and there were many great people in that era as well. Rosa Parks, Reverend Abernathy, Jonathan Daniels of Keene. But there is one person who stands head and shoulders above all of the others of that era. One person who dedicated his life to civil rights. One person who dedicated his life to the idea that America should live up to those ideals of our founders, that we are all created equal, that we are all entitled to life, liberty and the pursuit of happiness. It is for these reasons that it is right and proper that Civil Rights Day should bear the name of Martin Luther King, Jr. I am proud to be a cosponsor of this bill to honor my brother, Martin Luther King, Jr.

SENATOR PIGNATELLI: I, too am proud to be a cosponsor of this bill as I have been for every Martin Luther King bill since I joined the House of Representatives since 1986. I urge your support for SB 80 an act adding the name of Dr. Martin Luther King, Jr. to Civil Rights Day. As you may know, similar legislation has been introduced in the legislature every two-year period since 1979, with the exception of 1983. In addition, similar legislation has passed the state Senate in 1994 and 1995 and 1997, but on all three occasions, the bill was killed in the House. The time for this



bill to pass is long overdue. In 1986 Martin Luther King, Jr. Day became a federal holiday. Now 13 years later in 1999, the climate is overripe for this bill to pass in New Hampshire. The voters of New Hampshire, the business community, the church groups, school districts and citizens want this legislation passed. At a time when our country is mired in violence and non-accountability, I know of no other individual whose exemplary vision can provide Americans with the moral life boat that it so desperately needs. Dr. King provided our nation with an ethical standard. A standard of human rights, not just for African Americans, but for all Americans. For this reason, I urge the legislature of New Hampshire to pass SB 80. Turn on the television, read the newspaper, listen to the radio, you cannot avoid the fact that more and more people are turning to violence to solve their problems. Violence knows no race, no gender, or no social class. It is time to educate people that violence and hatred is not tolerable and is not the answer. It is time for New Hampshire to unite and promote the teachings of Dr. King and teach our children that they, like Martin Luther King, Jr. can make a difference on this earth without resorting to violence. We must teach our children that the most intimidating form of power comes from the mind and the pen, and not the fist. Dr. King provided us with a dream. Dr. King provided us with an alarm clock as he said with "Freedom ringing from the prodigious hilltops of New Hampshire." I say that it is about time for New Hampshire to wake up. Thank you.

SENATOR KRUEGER: Soon after the death of Martin Luther King, I was privileged as a young professor to attend a conference at the University of Georgia in Athens. At that time, I was even further privileged to have a meeting with Coretta Scott King. I remember asking her at that meeting, "What will you do?" Many of us who are in college especially, people like me who attended college in Washington, D.C., were very caught up in the civil rights movement. When I asked her that question, she didn't hesitate a moment. She looked at me and she said, "The movement is not Martin Luther King, the movement is everyone." I took that literally. I have taken that statement literally my whole life. Then two years ago when the vote came in the House, I voted against including Dr. Martin Luther King's name to civil rights day, specifically because I felt justified inside of myself, in quoting Coretta Scott King. I felt terrible after that vote. I thought about it over and over and over again. I decided after conversations with all of the people that I thought could give me knowledge, that I had voted incorrectly. I stand here to correct that vote. I think about the fact that I wouldn't want someone choosing my icon. I think about the fact that young people, young black men, predominant to our prisons right now, look to sports stars, music stars, as their heroes. I maintain that we need more people like Dr. King to be their heroes. I think that all of us could use heroes, so I very proudly support this piece of legislation, and I very proudly ask not just this body, but the body that I was elected to previously, to support it. I hope that this is the year. I thank you very, very much.

SENATOR COHEN: Sometimes I have spoken to people who wondered why we don't just keep it Civil Rights Day, wasn't Martin Luther King just about civil rights, there have been so many heroes that have been mentioned in the civil rights struggle? Well I would maintain that it is our job to make sure that we have civil rights day 365 days a year, not just one. But there is one day that we recognize Dr. Martin Luther King specifically. It is important, as has been said, that we teach our children not just about civil rights, which was certainly part of his struggle, but

about taking personal risks and acting on courage, acting on conscience, challenging the foreign policy of the president in a war situation that was tearing the country apart, but acting on conscience and taking that personal risk. Martin Luther King provides inspiration. He is the kind of hero that we need for the future as Senator Krueger mentioned. I think that it is important that we specify the name of Dr. Martin Luther King, Jr. on this holiday. Thank you.

**SENATOR LARSEN:** Mr. President and members of the Senate, as we cast this vote today, I was trying to think how we could mark this event, believing as I do believe, that this is the session that the legislature and the governor will in fact enact Martin Luther King Day. I am feeling that I couldn't just sit and cast my vote yes, as I have done for the past two sessions, but believing that this is in fact a historical day. I tried to think how we could recognize this, and I have decided that as I cast my vote for this bill, I will stand. I ask those who want to join me to stand as you cast your vote for this bill and to stand for those and with those who will not tolerate intolerance and to stand with those who fight for the principles of equality and non-violent social change. I plan to stand as I cast my vote and I ask the rest of you, as you feel comfortable to do that. Thank you.

**Question is on the motion of ought to pass.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Pignatelli.**

**The following Senators voted Yes: F. King, Gordon, Fraser, Below, McCarley, Trombly, Blaisdell, Fernald, Squires, Pignatelli, Larsen, Krueger, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.**

**The following Senators voted No: Johnson, Disnard, Roberge, Francoeur, Brown.**

**Yeas: 19 - Nays: 5**

**Adopted.**

**Ordered to third reading.**

### **ANNOUNCEMENTS**

**SENATOR FRASER (Rule #44):** I would like to know if Senator Trombly lost some sort of a bet that required him to wear that necktie today?

### **RESOLUTION**

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time and that the bills ordered to third reading be read a third time by this resolution and all titles be the same as adopted and that they be passed at the present time and that when we adjourn, we adjourn until Wednesday April 14, 1999 at 1:00 p.m.

**Adopted.**

### **LATE SESSION**

#### **Third Reading and Final Passage**

**SB 58,** allowing clinical mental health counselors to obtain third party payment for services rendered which would otherwise qualify for such payments.

**SB 80**, relative to adding the name of Martin Luther King, Jr. to Civil Rights Day.

**SB 85-FN**, including the judiciary as a public employer under the public employees labor relations act.

**SB 102**, relative to payment of the premium tax.

**SB 103**, making certain changes in the insurance laws.

**SB 104**, making a variety of changes in certain insurance laws.

**SB 105**, relative to continuation of coverage of health insurance.

**SB 114**, relative to health care carrier disclosure of third party liability.

**SB 160**, establishing a committee to study and identify or establish the duties of the fish and game commission.

**SB 173-FN**, relative to optional allowances for beneficiaries of the New Hampshire retirement system members.

**SB 177**, allowing marriage and family therapists to obtain third party payments for services rendered which would otherwise qualify for such payments.

**SB 182-FN**, relative to eligibility for ordinary death benefits under the New Hampshire retirement system.

**SB 200**, relative to child care licensing procedures.

**SB 215**, transferring certain responsibilities for shellfish harvesting and regulation.

**SB 224**, relative to stenographic records and availability of transcripts of adjudicative hearings before licensing boards.

**HB 227**, establishing a committee to study the maintenance of voter checklists.

**HB 253**, allowing ballots to be examined and counted prior to the opening of polls on election day.

Senator Johnson moved that the business of the day being completed, that the Senate now adjourn to Wednesday, April 14, 1999 at 1 p.m.

**Adopted.**

**Adjournment.**

*April 14, 1999*

The Senate met at 1:00 p.m.

A quorum was present.

The prayer was offered by Rev. David P. Jones, Senate Chaplain.

As you struggle here, may your ideals never abandon you nor you them. May your mind never allow you to escape the practice of an authentic realism. May your inner eyes always give you a sharp and focused vision to see what is actually there, not just what appears at first. And may your heart always drive you in a direction that brings you nearer to one another and not farther apart, for the One with the answers is in your midst.

*Give us grace, Good God, to deal with the frustrations, stresses, delays and uncertainties of our days. Make us rigid enough to stand tall, flexible enough to bend and smart enough to know when to do which or neither.*

*Amen*

Senator Larsen led the Pledge of Allegiance.



## INTRODUCTION OF GUESTS

### HOUSE MESSAGE

The House of Representatives has passed bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 258**, establishing Gold Star Mother's Day honoring mothers who lost sons or daughters while on duty in the armed forces.

**HB 345-FN**, relative to harassment via the computer.

**HB 356**, relative to the issuance of summons and notice in CHINS petitions.

**HB 367**, relative to requesting certifying scientists to appear at DWI hearings.

**HB 383**, relative to the authority of the department of environmental services to assign air pollution allowances and credits.

**HB 402**, establishing a committee to study methods to promote the use of renewable energy sources.

**HB 403**, relative to speed limits on Turtle Town Pond in Concord.

**HB 530**, establishing a committee to review the policies and procedures of the joint health council.

**HB 552**, relative to the issuance of crossbow permits to persons with a permanent physical disability.

**HB 583**, extending the reporting date for the committee studying the issue of updating New Hampshire laws related to fences.

**HB 603**, relative to the performance audit and oversight committee.

**HB 604**, relative to filling a vacancy in the office of county commissioner.

**HB 619-FN**, requiring the commissioner of health and human services to produce certain annual reports.

**HB 661-L**, relative to the scope of abatement appeals.

**HB 671**, adding a member to the council on resources and development.

## INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 258-671 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

**Adopted.**

### First and Second Reading and Referral

**HB 258**, establishing Gold Star Mother's Day honoring mothers who lost sons or daughters while on duty in the armed forces. **Internal Affairs**

**HB 345-FN**, relative to harassment via the computer. **Judiciary**

**HB 356**, relative to the issuance of summons and notice in CHINS petitions. **Public Institutions, Health and Human Services**

**HB 367**, relative to requesting certifying scientists to appear at DWI hearings. **Judiciary**

**HB 383**, relative to the authority of the department of environmental services to assign air pollution allowances and credits. **Environment**

**HB 402**, establishing a committee to study methods to promote the use of renewable energy sources. **Energy and Economic Development**

**HB 403**, relative to speed limits on Turtle Town Pond in Concord. **Transportation**

**HB 530**, establishing a committee to review the policies and procedures of the joint health council. **Executive Departments and Administration**

**HB 552**, relative to the issuance of crossbow permits to persons with a permanent physical disability. **Wildlife and Recreation**

**HB 583**, extending the reporting date for the committee studying the issue of updating New Hampshire laws related to fences. **Internal Affairs**

**HB 603**, relative to the performance audit and oversight committee. **Executive Departments and Administration**

**HB 604**, relative to filling a vacancy in the office of county commissioner. **Public Affairs**

**HB 619-FN**, requiring the commissioner of health and human services to produce certain annual reports. **Public Institutions, Health and Human Services**

**HB 661-L**, relative to the scope of abatement appeals. **Executive Departments and Administration**

**HB 671**, adding a member to the council on resources and development. **Energy and Economic Development**

### HOUSE MESSAGE

The House of Representatives has passed bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 56**, establishing a procedure for reinstating corporate charters that have been expired for more than 3 years.

**HB 64**, relative to changes of registration for undeclared voters.

**HB 82**, establishing a committee to study financial arrangements among hospitals, physicians, and insurance companies.

**HB 205**, relative to the requirement for posting of bond by an applicant for a writ of replevin.

**HB 208-FN**, establishing a coordinated and comprehensive effort by state agencies for economic growth, resource protection, and planning policy to deter sprawl.

**HB 327-L**, allowing municipal governing bodies to enter into lease agreements for equipment.

**HB 381**, prohibiting any candidate from receiving the nomination of more than one party.

**HB 422**, relative to advertising by rent-to-own businesses.

**HB 428**, relative to school administrative units.

**HB 441**, relative to a mother's right to breast-feed.

**HB 444**, relative to establishing a study committee to review reestablishing passenger rail service on the Eastern Line between Newburyport, Massachusetts and Kittery, Maine.

**HB 456**, establishing a committee to study issues relating to the deaf community in New Hampshire.

**HB 638-FN**, authorizing a limited license for certain travel agents.

**HB 664**, establishing a study committee on rights of ownership to cemetery plots.

**HB 729**, adding social clubs recognized by the Internal Revenue Service to the definition of "charitable organization" for purposes of the laws governing raffles.

**HJR 6**, encouraging the revitalization of the northern rail line from Concord to Lebanon.

### INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 56-HJR 6 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

**Adopted.**

### First and Second Reading and Referral

**HB 56**, establishing a procedure for reinstating corporate charters that have been expired for more than 3 years. **Executive Departments and Administration.**

**HB 64**, relative to changes of registration for undeclared voters. **Public Affairs**

**HB 82**, establishing a committee to study financial arrangements among hospitals, physicians, and insurance companies. **Insurance**

**HB 205**, relative to the requirement for posting of bond by an applicant for a writ of replevin. **Judiciary**

**HB 208-FN**, establishing a coordinated and comprehensive effort by state agencies for economic growth, resource protection, and planning policy to deter sprawl. **Energy and Economic Development**

**HB 327-L**, allowing municipal governing bodies to enter into lease agreements for equipment. **Executive Departments and Administration**

**HB 381**, prohibiting any candidate from receiving the nomination of more than one party. **Public Affairs**

**HB 422**, relative to advertising by rent-to-own businesses. **Public Affairs**

**HB 428**, relative to school administrative units. **Education**

**HB 441**, relative to a mother's right to breast-feed. **Public Institutions, Health and Human Services**

**HB 444**, relative to establishing a study committee to review reestablishing passenger rail service on the Eastern Line between Newburyport, Massachusetts and Kittery, Maine. **Transportation**

**HB 456**, establishing a committee to study issues relating to the deaf community in New Hampshire. **Public Institutions, Health and Human Services**

**HB 638-FN**, authorizing a limited license for certain travel agents. **Executive Departments and Administration**

**HB 664**, establishing a study committee on rights of ownership to cemetery plots. **Public Affairs**



**HB 729**, adding social clubs recognized by the Internal Revenue Service to the definition of "charitable organization" for purposes of the laws governing raffles. **Internal Affairs**

**HJR 6**, encouraging the revitalization of the northern rail line from Concord to Lebanon. **Transportation**

### HOUSE MESSAGE

The House of Representatives has passed bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 340**, establishing a committee to study mercury source reduction and recycling issues.

**HB426**, relative to clean indoor air in state buildings.

**HB 492-FN-A-L**, reducing the state bond guarantees limit for wastewater projects.

**HB 494-FN-A**, making an appropriation to the department of cultural resources for the purpose of funding participation of the state in the Smithsonian Festival of American Folklife.

**HB 495-FN-A**, relative to reauthorizing the motor oil discharge cleanup fund and increasing the fuel oil discharge cleanup fund fee, allowing coverage for discharge prevention, and allowing reimbursement for replacing substandard tanks.

**HB 558-FN**, relative to solid waste management.

**HB 572-FN-A**, relative to the apportionment provisions of the business profits tax.

### INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 340-572 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

**Adopted.**

### First and Second Reading and Referral

**HB 340**, establishing a committee to study mercury source reduction and recycling issues. **Environment**

**HB 426**, relative to clean indoor air in state buildings. **Environment**

**HB 492-FN-A-L**, reducing the state bond guarantees limit for wastewater projects. **Finance**

**HB 494-FN-A**, making an appropriation to the department of cultural resources for the purpose of funding participation of the state in the Smithsonian Festival of American Folklife. **Finance**

**HB 495-FN-A**, relative to reauthorizing the motor oil discharge cleanup fund and increasing the fuel oil discharge cleanup fund fee, allowing coverage for discharge prevention, and allowing reimbursement for replacing substandard tanks. **Environment**

**HB 558-FN**, relative to solid waste management. **Environment**

**HB 572-FN-A**, relative to the apportionment provisions of the business profits tax. **Ways and Means**

### COMMITTEE REPORTS

**HB 79**, relative to reports to the bank commissioner and to safe deposit box openings. Banks Committee. Vote 3-0. Ought to Pass, Senator Fraser for the committee.

**SENATOR FRASER:** This bill requires the banks to send copies of 'suspicious activities' reports to the Banking Department. These reports will replace the current requirement that banks report any shortages over \$500. The 'suspicious activities' reports are currently required by the federal government. The bill also eliminates a provision of law that requires a justice of the peace to be present when a safe deposit box is opened by a bank, when the owner has defaulted on rental payments. A notary public still needs to be present, and the presence of a justice of the peace is redundant. The committee was unanimous in recommending this bill as ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 80**, making technical corrections in the banking laws. Banks Committee. Vote 3-0. Ought to Pass, Senator Klemm for the committee.

**SENATOR KLEMM:** This bill makes several technical corrections to the banking laws. The bill eliminates a case of double reporting when a mutual holding company reorganizes involving a merger transaction, to leave just a single reporting requirement. In section two the bill simply adds the word "or" so that the language matches in the paragraph. In the third section the word "bank" is eliminated because a holding company can be a bank or a savings and loan. The fourth section removes a reference to a part of that statute that no longer exists. Section five is similar to section two, in that it is merely making sure that language within a paragraph is uniform. The last section adds a reference to a federal statute concerning disclosure. The committee recommends this bill ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 81**, permitting the city of Manchester to issue bonds to finance unfunded liability of the city's employee pension system. Banks Committee. Vote 4-0. Ought to pass with amendment, Senator Fraser for the committee.

**1999-0288s**

**10/01**

#### **Amendment to SB 81**

Amend the bill by replacing sections 2 and 3 with the following:

2 Issuance of Bonds or Notes. The city of Manchester is hereby authorized to issue bonds or notes from time to time up to an aggregate principal amount not exceeding \$30,000,000 for the purpose of funding the unfunded pension liability, so-called, of the pay-as-you-go "old" pension system of the city of Manchester. Bonds or notes issued pursuant to the authority hereof shall be issued for terms not in excess of 30 years from their date of issue and, except as otherwise provided herein, shall be subject to the applicable provisions of RSA 33, the municipal finance act. The aggregate amount of bonds or notes which may be issued by the city of Manchester hereunder, shall not exceed the amount which the "old"

pension system of the city of Manchester, with the approval of the mayor and city finance officer, shall determine to be the unfunded actuarial liability, so-called, of the "old" pension system of the city of Manchester. Such determination of the "old" pension system of the city of Manchester shall be based upon the report of a nationally recognized independent consultant actuary, which may be the consulting actuary generally retained by the city of Manchester. Such report shall also set forth the present value savings to the city of Manchester reasonably expected to be achieved as a result of the issuance of such bonds and shall be filed with the board of mayor and aldermen of the city of Manchester prior to the final passage of any bond resolution of the city of Manchester authorizing the issuance of bonds or notes hereunder.

3 Maturity Schedules. Notwithstanding the provisions of any general or special law to the contrary, the maturities of bonds or notes issued pursuant to the authority of this act shall either be arranged so that for each issue the annual combined payments of principal and interest shall be as nearly equal as practicable in the opinion of the officer of the city authorized to issue said bonds or notes or shall be arranged in accordance with a schedule providing for a more rapid amortization of principal.

SENATOR FRASER: Mr. President, this is a very important bill for the city of Manchester. What the bill would do is, it would permit the city to issue bonds to finance unfunded liability of the city's employee pension system. The board of Mayor and Alderman support this proposal, and have voted in favor of the legislation. The bonds would finance the "old" pension system, which existed until 1974, some retirees, though, are still in the system. The "old" pension system was funded by the city, and was not based on investments, which is why the system is currently under-funded. This bill will allow the city, after two-thirds approval by the mayor and aldermen, to issue bonds at a current low interest rate to completely fund the system. This bill does not increase Manchester's bonding cap. The committee recommends this bill ought to pass as amended.

**Amendment adopted.**

**Ordered to third reading.**

**SB 97**, relative to testamentary trusts which are institutional funds. Banks Committee. Vote 4-0. Ought to Pass, Senator Wheeler for the committee.

SENATOR FRASER: The attorney general's office continues to demonstrate some concern about this bill as currently written. Having said all that, Mr. President, I move to rerefer.

**Senator Fraser moved to rerefer.**

**Adopted.**

**SB 97 is referred to the Banks Committee.**

**SB 70**, changing the safe drinking water standard for MTBE. Environment Committee. Vote 7-1. Ought to Pass, Senator Wheeler for the committee.

SENATOR WHEELER: I rise in support of SB 70. MTBE as you probably all know, is an oxygenate added to our gasoline that we hope would prevent cleaner burning fuel. At the time that we were adding it, we didn't all understand that it might be a ground water pollutant, which it turns out to be. A toxicologist with DHHS and the Bureau of Health



Risk Management (BHRM), testified that there are two different types of regulatory values used in drinking water regulatory process. Primary and secondary contaminate levels. Primary contaminate levels are enforceable standards and equal the maximum level of a contaminate that is allowable in public drinking supplies. Senate Bill 70 proposes to reduce the allowable level of MTBE in New Hampshire water to five parts per billion. Testimony given on behalf of SB 70 indicated that motor gasoline containing the additive MTBE is dangerous to human health. It causes respiratory illness such as asthma and shortness of breath, allergic reactions such as rashes and sinuses and neuro-toxic symptoms including headaches, light-headedness, inability to concentrate and anxiety. MTBE is also a probable human carcinogen causing cancer such as leukemia, lymphoma, kidney, testicular and liver cancer. We don't want this thing. In order to reduce or prevent unnecessary risks of individuals developing cancers and other health effects. The drinking water standard for MTBE should be reduced. Pregnant woman, young children, people with asthma and respiratory diseases, people on medications, diabetics, people with heart disease and sensitive individuals are at an even greater risk of developing serious diseases when they are exposed to MTBE vapors, contaminated water or automobile exhaust containing this chemical. That is why we are suggesting the low parts per billion level of five to help the most vulnerable segments of our population. Senate Bill 70 is intended to protect against levels of MTBE that can adversely effect public health. I urge you to think of your constituents and their health as well as your own and pass SB 70. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 71**, establishing a ban on MTBE in gasoline as of January 1, 2000. Environment Committee. Vote 6-2. Ought to Pass, Senator Wheeler for the committee.

SENATOR WHEELER: I rise in support of SB 71. As you have just heard, this is a poison and a health hazard. Pressure is mounting across the United States to stop the use of this additive. Currently, North Carolina, Montana and Alaska have prohibited its use. Bills are pending in Connecticut. California has adopted a ban over the long term, and it is being considered at the federal level. There is a lot of consumer pressure now to do this. Both Tosco Corporation and Irving Oil Corporation have said that they could produce gasoline free of MTBE in Maine in a manner of a few months, so we could get this gasoline without MTBE. One of the things that I thought was fascinating about this was there was an article from a California newspaper that said, "Sixteen years before MTBE rich gasoline was approved for state-wide use in California to combat air pollutions, oil companies knew from their first experience, with the fuel additive in New England, how quickly MTBE could migrate from leaking storage tanks to drinking water wells. This is shown in company records and technical journals. I think that is irresponsible of the petroleum industry, and something that we need to take action against; however, because concerns have been raised about the immediate nature of this ban, I am proposing that we recommit it to the Environment Committee.

**Senator Russman moved to recommit.**

**Adopted.**

**SB 71 is recommitted to the Environment Committee.**

**SB 159**, relative to early reduction of greenhouse gases. Environment Committee. Vote 7-0. Ought to Pass, Senator Cohen for the committee.

**SENATOR COHEN:** According to a 1998 EPA study the United States net emission of gases that cause global warming rose by 20 percent from 1990 to 1996. The total emissions of heat trapping gases such as carbon dioxide increased by 10 percent at that time. Meanwhile, forests and other natural absorbers of carbon gases decreased by 30 percent accounting for the bigger net rise in emissions. This legislation authorizes the Department of Environmental Services to establish a voluntary registry for early action by companies and others within the state to reduce emissions of greenhouse gases. The three main points that underlie this legislation. First, the federal government is likely to impose greenhouse gas emission reduction requirements at some future point. Second, several New Hampshire corporations have expressed support for prudently addressing global climate change, and have indicated a willingness to pursue early reductions in their own greenhouse gas emissions. Finally, if and when federal emission reduction requirements are imposed, a state sanctioned voluntary registry of gas reductions will help protect New Hampshire companies and other entities by reducing the risk that they will not receive appropriate credit of greenhouse gas emission reduction activities that they have already taken. DES testified that establishing such a registry at this time is in the state's best interest, as it would encourage prompt adoption of energy efficient conservation measures. In addition, the Business and Industry Association testified that businesses recognize the potential impacts of greenhouse gases on our environment and many are already taking proactive measures to reduce these emissions. Also, many of their members have expressed a strong desire to participate in this effort. Overall, a reduction of the emission of air pollution would be a net benefit for human health and for the environment. I urge you to support SB 159. Thank you.

**SENATOR F. KING:** Senator Cohen, I noticed that there is no fiscal note on this bill. Will there be no cost to implement this new registry?

**SENATOR COHEN:** No. There was some testimony that it could be done within the department now at little if any costs. **TAPE CHANGE**

**SENATOR F. KING:** I assume that the information is going to be kept at DHHS, is that right? I mean DES?

**SENATOR COHEN:** Yes.

**SENATOR F. KING:** So they can do that within their own funding capability now?

**SENATOR COHEN:** They did not express a concern in the hearing.

**SENATOR F. KING:** Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 135-FN**, relative to the water supply land protection grants. Finance Committee. Vote 8-0. Ought to pass with amendment, Senator F. King for the committee.

1999-0800s

03/01

**Amendment to SB 135-FN**

Amend RSA 486-A:2, VIII as inserted by section 1 of the bill by replacing it with the following:

***VIII. "Water supply land protection grantee" means an entity that receives a water supply land protection grant to acquire and maintain in perpetuity land or easement for the purpose of protecting a drinking water source. A water supply land protection grantee shall be a nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code and having land conservation or public water supply as its principal mission, or a municipality or a state or federal agency.***

SENATOR F. KING: Senate Bill 135 was referred to the Finance Committee from the Committee on Environment where it met with no opposition. This bill establishes a matching grant program to conserve water supply land for the purpose of protecting drinking water easements. The bill expands the current aid to public water systems grant by requiring the state to pay up to 50 percent of eligible water supply land protection costs, and 10 percent of eligible surplus water treatment costs. The department estimates the cost to be \$1.5 million annually. The department further stated that administrative costs for salary and benefits and contract services would be funded from source water protection related federal grants. There appears to be no charge to the state budget for this program. The Finance Committee amended this bill to broaden the definition of "grantee." The amendment is in the calendar. The committee recommends this bill as ought to pass as amended.

**Amendment adopted.**

**Ordered to third reading.**

**CACR 18**, relating to jury trials in child custody proceedings. Providing that there shall be a right to a jury trial in all proceedings involving child custody. Judiciary Committee. Vote 8-0. Inexpedient to Legislate, Senator Gordon for the committee.

SENATOR GORDON: Constitutional Amendment Concurrent Resolution 18 would have provided the right to a jury trial in all proceedings involving child custody. The Judiciary Committee applauds the rationale behind this legislation. Some may prefer a jury of peers as opposed to subjecting such an important matter as child custody to the discretion of a single judge. However, the potential implementation of such a program needs to be carefully thought out and would be extremely costly. The committee felt it would be better to address this issue in a more limited manner. Perhaps legislation can be crafted in the future that will more precisely target the issue. Therefore, the Judiciary Committee unanimously recommends that CACR 18 be voted inexpedient to legislate.

**Committee report of inexpedient to legislate is adopted.**

**CACR 19**, relating to 5-year renewable terms for all state judges and the age limit for state judges and county sheriffs. Providing that all state judges be commissioned for renewable 5-year terms and that there shall be no age limit for state judges and county sheriffs. Judiciary Committee. Vote 7-1. Inexpedient to Legislate, Senator Fernald for the committee.

SENATOR FERNALD: The independence of our judiciary is one of the cornerstones of our democracy, and the problem with having judges reviewed by politicians every five years is that it will subject them to po-



litical pressure. The people on the committee feel that there is definitely an issue about accountability of judges, but this is the wrong way to do it. We voted 7-1 inexpedient and I hope that you will support that recommendation.

**Recess.**

**Out of Recess.**

**Question is on the motion of inexpedient to legislate.**

**A roll call was requested by Senator Fernald.**

**Seconded by Senator Francoeur.**

**The following Senators voted Yes: F. King, Gordon, Fraser, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Squires, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler, Hollingworth, Cohen.**

**The following Senators voted No: Johnson, Roberge, Francoeur, Krueger, Brown, Klemm.**

**Yeas: 18 - Nays: 6**

**Committee report of inexpedient to legislate is adopted.**

**Recess.**

**Out of Recess.**

**SB 57, permitting challenges to judges. Judiciary Committee.**

**MINORITY REPORT, Inexpedient to Legislate, Senator Wheeler for the committee. Vote 2-6**

**MAJORITY REPORT, Ought to pass with amendment, Senator Fernald for the committee. Vote 6-2**

**1999-0789s**

**03/01**

### **Amendment to SB 57**

**Amend RSA 491:3-b as inserted by section 1 of the bill by replacing it with the following:**

**491:3-b Challenges.** Each party to any case before the superior court may request that one justice of the court, or one marital master in a case that may be heard by a marital master, not be assigned to the case. Such request must be filed with the court, in writing, within 30 days after arraignment in any criminal case, and within 30 days of the return date in any other case. Upon timely filing of such a request, the clerk of the court shall not schedule the case in question with the justice or marital master named in the request.

**Amend RSA 502-A:6-c as inserted by section 2 of the bill by replacing it with the following:**

**502-A:6-c Challenges.** Each party to any case before the district court may request that one justice of the court not be assigned to the case. Such request must be filed with the court, in writing, within 30 days after arraignment in any criminal case, and within 30 days of the return date in any other case. Upon timely filing of such a request, the clerk of the court shall not schedule the case in question with the justice named in the request.

**SENATOR WHEELER:** Mr. President, you will be happy to know that I am deferring my statement because the chairman of Judiciary is going to make a motion.

**Senator Pignatelli moved to recommit.**

**Adopted.**

**SB 57 is recommitted to the Judiciary Committee.**

**SB 67**, limiting liability resulting from the use of automatic external defibrillation. Judiciary Committee. Vote 6-0. Ought to Pass, Senator Gordon for the committee.

**SENATOR GORDON:** Senate Bill 67 would limit the liability resulting from the use of automatic external defibrillation (AED). This is an expansion of our "Good Samaritan" law to specifically address concerns raised by the advances of this life saving technology. Sudden cardiac arrest is one of the leading causes of death among adults in North America. It is responsible for 39 percent of all deaths in New Hampshire. Half of these occur suddenly without warning. One-quarter to one-third of all patients die with their first heart attack. For every minute of delay in treating the victim of a heart attack, a 10 percent likelihood of survival is lost. The more quickly the response can be made, the higher the chance of survival. It is the goal of the American Red Cross, the American Heart Association, and other medical groups to save lives by having Automatic External Defibrillators (AEDS) readily available in more businesses, malls, hotels, health clubs, public buildings, police and fire vehicles, and on public transportation. Testimony was received from a Concord resident who went into cardiac arrest aboard an American Airlines flight. Fortunately for him, the airline had just weeks before installed a defibrillator and the stewardess was trained to use it. Mr. Tighe now advocates for the enactment of this legislation and the use of AEDs. Tyco International is the first manufacturer in the state to have installed AEDs, but only because the plant physician personally assumed the liability. The American Heart Association, the New Hampshire Medical Society, physicians, nurses and paramedics all testified in support of this legislation. The Senate Judiciary Committee unanimously recommends SB 67 as ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 88-FN**, relative to penalties for third driving while intoxicated offenses. Judiciary Committee.

**MINORITY REPORT**, Inexpedient to Legislate, Senator Wheeler for the committee. Vote 3-5

**MAJORITY REPORT**, Ought to Pass, Senator Gordon for the committee. Vote 5-3

**SENATOR WHEELER:** I rise in opposition to SB 88. When you vote, I would urge you to remember that we are talking about the disease of alcoholism and in response to individuals who have diseases, we don't put them into prison, we don't put people who are sick in prison, we treat them. Raising the penalty to one-year in prison for a third DWI offense is not the sort of rehabilitated treatment which will keep a DWI offender from driving while intoxicated again. The best deterrent to prevent future DWI offenses is education and rehabilitation. Punishment is honestly not going to work in this care. If you could make a reasoned choice about drinking and driving based on your knowledge of what a sure and certain punishment was going to be, you wouldn't be an alcoholic. If you could make that choice you would say, "Oh, by golly I am not going to have that second drink and get into my car and drive because I don't want to go to prison." But if you are an alcoholic, you are not thinking

that way. So I have proposed preventing future DWI offenses by beefing up our substance abuse treatment infrastructure, which is pretty weak in New Hampshire right now. A prison sentence is not going to prevent the alcoholism from reoccurring. A one-year prison sentence is more likely to create a hardened criminal and an alcoholic, than to stop the person from driving again drunk the minute that person gets out of prison. How many prisons do we intend to build for mandatory prison sentences when we should be building our treatment infrastructure to solve the problem rather than to postpone it. We need to spend our state dollars wisely on something that will make a real difference. This won't make a difference, it just feels good to lock them away and punish them, but believe me that it won't make a difference, and it won't solve the problem, and we will be wasting our state dollars. So I urge you to vote against the passage of SB 88.

SENATOR GORDON: I am going to defer that report to Senator Brown.

SENATOR BROWN: I rise to speak strongly in support of SB 88. Senate Bill 88 will enhance the penalty for a third DWI offense from 32 days in jail to one-year in prison. A supporter of this bill estimated that since 1980, approximately 1000 people have been convicted as three-time DWI offenders. Much of the testimony was very emotional and some of those that testified in support of the bill have lost a member of their own family from an automobile accident that occurred because a two-time DWI offender was driving while intoxicated, yet a third time. I would like to mention in response to Senator Wheeler, that this does have an effect. I personally know somebody who was an alcoholic all of their life, and at the age of 70, was in an automobile accident, arrested for DWI, and sentenced to a mandatory prison sentence and never drank again. The passage of this bill into law will send a message to people who carelessly disregard the safety of others while driving while intoxicated. It will impose a more severe penalty only upon those who drive while intoxicated, and who have already been convicted of not only one DWI offense, but also two DWI offenses. If you pass this bill, you will be sending a message to those people who have paid the penalty for DWI two times already, but still continue to drive drunk. The message that you will send is that the penalty for such conduct will be more severe. The penalty will be one year in jail, which will have a significant impact on the personal lives of third DWI offenders. It is a message that says to a person who continues to drive while intoxicated, and has effectively disregarded two previous penalties, that this conduct must stop, or there will be a severe penalty. May I also add that this is not as severe a penalty as the penalty suffered by those who have been injured or those who have lost a family member because of an automobile accident involving a third time DWI offender. A required one-year sentence for a third time DWI offender will act as a strong deterrent for future offenders. I strongly urge you to vote to pass SB 88. Thank you.

SENATOR FRANCOEUR: Mr. President, I reintroduced this bill into the Senate again this year after it had inadvertently died in a Committee of Conference, after it had passed the House and Senate last year. I think that it is important that we tell citizens of the state of New Hampshire that New Hampshire is really tough on drunk drivers. This bill does nothing but convict those to jail time that have been caught three times in a seven year period. I am sure that all of us that have dealt with people, whether it is our own family or others, that three times in seven years, you have lost your license for part of that time in between. You have gone through a rehabilitation program already to get it back once and this is now the third time. The Department of Safety came in and



spoke in favor of this bill. There are thousands of individuals with numerous DWI offenses in the state of New Hampshire in the last ten years. We are not talking hundreds, we are talking thousands. I urge you today to vote this ought to pass. Don't wait until we see one of our children or family members hit by a drunk driver after they have been charged for it three times. Thank you, Mr. President.

SENATOR RUSSMAN: I am going to vote in favor of this bill although, frankly, I have really mixed emotions. I have a fairly extensive practice in this area, and I don't think that it really does much in the way of deterrence, and I think that we ought to all understand that we are going to be having a lot more jury trials with these types of things; and we have thousands of people, that means thousands of more jury trials and thousands of more prison cells that we are going to need...and that is fine. I hope that everybody supports that when we build a new prison. The problem is that it isn't the drunk drivers, you have to keep in mind that it is driving while intoxicated. The law in New Hampshire is that if you are impaired to the slightest degree, when you have one beer you don't feel anything, maybe you have two beers and you don't feel anything, and you have a third and you feel just a little bit of a flow. That is enough. I have had many people sit in my office that say, "Mr. Russman I wasn't that bad." I have to tell them that it doesn't have anything to do with it. It should be Mothers Against Impaired Drivers, MAID instead of MADD because the wrong message is being sent out there because people think that they are not drunk because they are not fall down drunk, but you don't have to be, and that message should go out there; and I have said that before and it doesn't seem to change, but it isn't drunk drivers, it is impaired to the slightest degree. I am going to support it because it certainly can be a problem, but I have very, very mixed emotions about it in terms of its deterrent effect.

SENATOR J. KING: I rise in opposition to this bill, not because I am soft on crime or anything like that. My basic reason is that after the first time, work with them then. Get them into these places that are for alcoholics or whatever they may be. After the second time, do it. If you let them go and you let them go, you can lock them up for one year and it isn't going to do any good. The amount of money that you are going to spend on that one year could have been spent to take care of that person the first time around. If they don't succeed...if you put something in there like that, that if they have been treated beforehand and then they get an offense, then I would go along with the bill, but not to wait until it happens and then you lock them up. It is much more expensive to the state. It would be less expensive if you treated them and try to cure the cause and eliminate the problem. We are not doing that here in this bill.

SENATOR GORDON: I think that I am in many ways like Senator Russman, I have mixed emotions about the bill, but I support the mandatory one year sentence for many of the same reasons that the people oppose it are talking about. That is that we have given these people an opportunity and in fact, after their second conviction, they are required to go through programs. In fact they have already been through programs, and those programs have in fact failed. That may be because without taking the other environmental considerations, that program isn't going to do them any good because they are going to continue to drink. The one thing that I would point out, is that during this one year prison sentence, most of these people who are committed, won't simply be sitting in their cell during that one year, in fact they will be participating in programs that could hopefully help them. The other thing

which concerns me greatly, and it concerns me only because I care about the law, and that is that we all recognize the ravages of alcoholism and how many people who are addicted probably cannot help themselves, but when we get to a point in our society where we say that that is an excuse for obeying the law, when, because someone is an alcoholic, they are no longer responsible for their conduct, then I think that we have gone too far and we would in fact be turning our legal system up-side down. I think that it is important that we hold people accountable and make them accountable. When in fact they have acted totally irresponsible when they disregarded the safety of every other person in this state by driving on our roadways, three times and that is the number of times that they have been caught...when they have done that, I don't think that a one year sentence is too onerous at all.

**SENATOR KRUEGER:** Twelve years ago a gentlemen who had been convicted of drunk driving on numerous occasions crossed the center line and crashed into a car that my sister, who was 29 at the time, was sitting in the back seat of. She was an incredible person. She was an administrator at North Eastern University and had her masters and well on her way to her doctorate in industrial psychology; hit her head on the top of the car and was in a coma for eight months. After that eight months, she slowly awoke and she was never the same. She was blinded. She had a final impartial lobectomy, and although she was a different person, she was still my sister and alive. A year and a half later she died. At her funeral there were hundreds of people, and many of the people that were there were newly blinded people that she had tried to help, but many of the people that were there were other families who were in mourning like we were. She had been married six months before this accident. This was their little mini honeymoon on Cape Cod. I beg you, please put these people behind bars. Thank you, I am sorry.

**SENATOR WHEELER:** I just wanted to clear up any misunderstanding that might exist in anyone's mind that I feel that because a person is ill or an addict or an alcoholic, that they don't need to be held accountable for their actions, my point is that if I could do anything that would prevent the kind of tragedy that happened in Senator Kruegers' family and in other families, if I thought that this bill would actually prevent those tragedies, I would support it. I stand in opposition because I don't think that a year in jail is going to help anyone. I think that we need to approach this from a different angle. I think that it is a serious problem that does need a approach. I just do not believe that this is the correct approach.

**Question is on the majority report of ought to pass.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Pignatelli.**

**The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, Disnard, Roberge, Blaisdell, Fernald, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, Russman, D'Allesandro, Klemm, Hollingworth, Cohen.**

**The following Senators voted No: McCarley, Trombly, J. King, Wheeler.**

**Yeas: 20 - Nays: 4**

**Adopted.**

**Referred to the Finance Committee (Rule #24).**

**Recess.**

**Out of Recess.**

**SB 141**, relative to information not subject to the right-to-know law. Judiciary Committee. Vote 8-0. Ought to Pass, Senator Squires for the committee.

**SENATOR SQUIRES:** This bill has to do with filings before the PUC and in times past when the communications were the monopoly, there were issues over the right-to-know, but in today's world where communications are not a monopoly, contained in those filings, is information that at best could be called proprietary, and it should not be released to competitors, that being the case, the filings are made...the commission may decide at some future time that the materials are relevant, given the pace of change in that industry, and it probably becomes irrelevant pretty quickly. I hope that you can understand how a company A might not want a file of information about a market plan, about a strategy to operate in the state and this gives them protection.

**Adopted.****Ordered to third reading.**

**SB 148**, relative to the content of personnel files of police officers. Judiciary Committee. Vote 8-0. Inexpedient to Legislate, Senator Pignatelli for the committee.

**SENATOR PIGNATELLI:** I rise on behalf of the Senate Judiciary Committee to report that the Senate Judiciary Committee voted 8 to 0 that SB 148 be inexpedient to legislate at this time. Senate Bill 148 would require the Police Standards and Training Council to adopt rules on the content of personnel files of police files. The bill provides that these rules shall include a procedure for removal from the personnel file of any information concerning complaints against a police officer which are not of major importance. The concern of supporters of SB 148 is that allegations that are kept in a police officer's file may prove to be unfounded; and thereafter serve to leave a negative impression about the police officer when the personnel file is subsequently reviewed, perhaps by a future employer. Opponents to the bill objected that the language in the bill is too broad and does not give adequate guidance as to what information should remain in the file and what information should be removed. Additionally, opponents of SB 148 believe that this bill is unnecessary. The Department of Safety opposed the bill and maintains that sufficient safeguards are currently in place. For instance, under RSA 275:56 a police officer is entitled to review his or her personnel file and request inclusion or exclusion of a particular material. On behalf of the Senate Judiciary Committee, I urge the Senate to vote SB 148 as inexpedient to legislate. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 151**, relative to assignment of judges. Judiciary Committee. Vote 8-0. Inexpedient to Legislate, Senator Wheeler for the committee.

**SENATOR GORDON:** Mr. President, on behalf of the Senate Judiciary Committee I rise to recommend that SB 151 be voted inexpedient to legislate. The Judiciary Committee voted 8-0 that SB 151 be inexpedient to legislate at this time. I hope that my testimony will not propel you into trying to overturn this decision. Senate Bill 151 would provide for an amendment to chapter 491 concerning the Superior Court to require the clerk of the court to assign each case on a random basis to a justice upon entering the case into the court calendar. Opponents of the bill ex-



pressed concern that the random assignment of each case could not be accomplished in an effective manner. According to testimony at the hearing, even in one particular court, cases cannot all be assigned at random. For instance, conflicts arise and often cases are specialized and are assigned to a particular judge because of the nature of the case. In fact, in some cases, due to the complex issues in a case, it is preferable to have one judge assigned to a case. In addition, there are times when judges are away because of illness or vacation in which case, if there are only two judges normally assigned to a particular courthouse, a case could not be randomly assigned to the only judge available at the court. Furthermore, this bill would present problems with the consolidation of cases and would interfere with the managing of case assignments for judges in each court. Pursuant to testimony at the hearing, the superior court is instituting the individual scheduling of judge's calendars to promote efficiency, and this new case assignment method should be given an opportunity to work. Because of the administrative problems that would arise due to the impact of this bill, the committee recommends that SB 151 be voted inexpedient to legislate.

### **Recess.**

### **Out of Recess.**

SENATOR GORDON: I rise to make the motion to recommit and would like to speak to the motion. When we considered this bill in the Judiciary Committee, we considered it also in connection with SB 57, which we have already voted to recommit, and both having to deal with the selection of judges for particular cases. I guess that would ask that everybody support the recommit motion so that we could consider these two bills together when they come back to committee.

**Senator Gordon moved to recommit.**

### **Adopted.**

**SB 151 is recommitted to the Judiciary Committee.**

**SB 165**, relative to the Uniform Trustees' Powers Act. Judiciary Committee. Vote 8-0. Ought to pass with amendment, Senator Gordon for the committee.

**1999-0787s**

**08/09**

### **Amendment to SB 165**

Amend the bill by replacing section 1 with the following:

1 New Paragraphs; Certificate Evidencing Trustee's Power to Convey Personal Property. Amend RSA 564-A:7 by inserting after paragraph III the following new paragraphs:

IV. A written certificate signed by a trustee with signature sworn to before a notary public, delivered to the transferee or a transfer agent in substantially the following form, shall be conclusive evidence and notice to all third parties that the trustee named therein and the trustee's successors have full and absolute power to convey any interest in personal property, tangible or intangible, held by the trustee and no third person or purchaser, without actual knowledge to the contrary, shall be obligated to further inquire as to the power or authority of the trustee to convey or to see to the application of any trust assets paid or delivered to the trustee.

The undersigned trustee(s) as Trustee(s) under the \_\_\_\_\_ Trust created by \_\_\_\_\_ as grantor under trust agreement dated \_\_\_\_\_, and thereto have full and absolute power in said trust agreement to convey

any interest in personal property held in said trust and no purchaser or third party shall be bound to inquire whether the trustee has said power or is properly exercising said power or to see to the application of any trust asset paid to the trustee for a conveyance thereof.

,Trustee

V. A similar certificate signed by any successor to the trustee named in an original or any subsequent certificate shall have the same effect as the original certificate. Such a certificate, in writing, sworn to, and delivered in the same manner as the prior trustee's certificate, shall conclusively establish the power of the successor trustee to convey said personal property.

**1999-0787s**

### AMENDED ANALYSIS

This bill allows trustees to certify their power to convey personal property held in trust by the delivery to the transferee or a transfer agent of a certified and guaranteed document without requiring further certification that the trust copy is a true and correct copy.

SENATOR GORDON: Senate Bill 165 authorizes trustees to certify their power to convey personal property held in trust by filing an acknowledged document. An affidavit process is currently accepted when real estate is conveyed. Senate Bill 165 would allow personal property, including bank accounts and securities, to be conveyed in the same manner. The Judiciary Committee amendment clarifies that the certificate is to be signed and delivered to the party to whom the property is conveyed. The Judiciary Committee recommends that SB 165 be made ought to pass as amended.

**Amendment adopted.**

**Ordered to third reading.**

**SB 185**, relative to property settlements in cases where certain domestic relationships have terminated. Judiciary Committee. Vote 5-0. Rereferred to Committee, Senator Trombly for the committee.

SENATOR TROMBLY: This bill would have allowed the Superior Court to exercise jurisdiction over cases where domestic relationships exist, either by force of law, or by the volunteering of the parties. Currently when people order themselves in these types of relationships, i.e. they are not married, but they live together, people acquire assets whether it be personal property or real estate. When those relationships break up, there is no sort of domestic type of law that enables a court to apply the equities in the case relative to the acquisition of that asset. That is what this bill would have done, but there are relationships that are ordered intentionally for certain reasons, and the committee wanted to examine exactly how this would work within the court system and what processes should exist before the court is given jurisdiction. For that reason, the committee has voted unanimously to recommend that it be studied.

**Adopted.**

**SB 185 is rereferred to the Judiciary Committee.**

**SB 176-FN-A**, relative to technology support for individuals and making an appropriation therefor. Public Institutions, Health and Human Services Committee. Vote 3-0. Ought to Pass, Senator McCarley for the committee.

SENATOR MCCARLEY: I rise in support of SB 176. We heard some spectacular testimony on this bill in terms of how important it is. I

think that people may or may not be aware of the ATEX services that are provided in this state where people who have family members, or themselves who have significant disabilities, are able to, using this resource center, be able to go and find out if equipment will work for them, find out if perhaps the equipment that they tried didn't work, but they haven't invested the kind of money that it needs. It is all done now. It is federal funds that allows us to purchase this equipment, and go out and beg, borrow and steal this equipment and have people be able to hear about it. It is sort of a band-aided kind of thing right now even with the federal funds. What's happening is that the federal funds are indeed being pulled back for this kind of programming. So this is a bill that would allow the state to make a commitment to continue this program. The fiscal note on it, I believe, is a half a million dollars. I would strongly, strongly urge you to support sending this bill to the Finance Committee, because it is needed. The testimony is amazing for what people have been able to do in keeping control of their own lives, because this kind of a resource is available. I would strongly urge you to pass it. Thank you.

**SENATOR KRUEGER:** I would also like to rise in very strong support of this bill. I can only tell you that this is a case where a dollar spent will bring you back multifold. Assisted technology today is quite amazing. Cerebral Palsy victims for example, now have means to test communications, voice activated computers are in place, and this borrowing of this equipment, this moving of technology around, not just saves the people who are involved money, which it does, because they can see that a particular \$1,500 device is not right for them, and they could go out and buy a \$200 device; but without question, puts these people back into the workforce. I was also just moved, but I am excited about how technology and disabilities have come to join. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #24).**

**HB 245-FN**, relative to fees and appropriations to the division of safety services. Transportation Committee. Vote 5-0. Ought to Pass, Senator Russman for the committee.

**SENATOR RUSSMAN:** This bill will allow for expansion of Marine Patrol Services. If any of you have bodies of water in your district, you know that the time is nonexistent. Certainly this would be an opportunity for them to have additional funds. This was passed by the Senate last year and the House, I think, took it out. It restored the unfunded road tolls as well as boat registration fees and fines, they had been removed by the House. We would urge passage of the bill.

**Adopted.**

**Referred to the Finance Committee (Rule #24).**

**SB 86**, relative to enforcement of the collection and payment of county taxes by the county treasurer. Ways and Means Committee. Vote 7-0. Ought to Pass, Senator F. King for the committee.

**SENATOR F. KING:** Senate Bill 86 is strictly a housekeeping measure. Back a few years ago, the county treasurer, acting in their responsibility used to have the same powers of collection as the state treasurer, then the state treasurer's power of collections was transferred to Revenue Administration, and the counties were left out. So it left the counties without



any way, legally, to collect the taxes. So this bill essentially gives the county treasurer the same rights of collection of taxes that the state or a local tax collector has.

**Recess.**

**Senator Cohen in the Chair.**

**Adopted.**

**Ordered to third reading.**

**SB 168**, adopting a model statute as a result of the tobacco litigation master settlement agreement. Ways and Means Committee. Vote 7-0. Ought to pass with amendment, Senator Below for the committee.

**1999-0819s**

**09/01**

### **Amendment to SB 168**

Amend the title of the bill by replacing it with the following:

**AN ACT** adopting a model statute included in the tobacco litigation master settlement agreement.

Amend RSA 541-C:2, IX(a)(1) as inserted by section 1 of the bill by replacing it with the following:

(1) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

Amend RSA 541-C:2, X as inserted by section 1 of the bill by replacing it with the following:

X. "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the state. The commissioner of the department of revenue administration shall adopt such rules, pursuant to RSA 541-A, as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Amend RSA 541-C:3, I(b) as inserted by section 1 of the bill by replacing it with the following:

(b) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

(1) 1999: \$.0094241 per unit sold after the effective date of this chapter.

(2) 2000: \$.0104712 per unit sold.

(3) For each of 2001 and 2002: \$.0136125 per unit sold.

(4) For each of 2003 through 2006: \$.0167539 per unit sold.

(5) For each of 2007 and each year thereafter: \$.0188482 per unit sold.

Amend RSA 541-C:3, III as inserted by section 1 of the bill by replacing it with the following:

III. Each tobacco product manufacturer that elects to place funds into escrow pursuant to this section shall annually certify to the attorney general that it is in compliance with paragraph I(b) of this section. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(a) Be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of paragraph I(b) or III of this section, may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(b) In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of paragraph I(b) or III of this section, may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(c) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state (whether directly or through a distributor, retailer, or similar intermediary) for a period not to exceed 2 years.

Amend RSA 541-C:3, V as inserted by section 1 of the bill by replacing it with the following:

V. The state shall be entitled to its costs and reasonable attorneys' fees incurred during any action for violation of this section pursuant to paragraph III of this section.

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect July 1, 1999.

1999-0819s

#### AMENDED ANALYSIS

This bill adopts a model statute, which is included in the tobacco litigation master settlement agreement. The bill requires tobacco product manufacturers who determine not to enter into the master settlement agreement to pay certain sums to the state to be placed into a qualified escrow fund to ensure that the state will have an eventual source of recovery from them if they are later proven to have acted culpably.

SENATOR BELOW: Senate Bill 168 adopts a model statute which was included in the tobacco litigation master settlement agreement. It is the only suggested legislation to come out of that settlement agreement and 99.8 percent of the cigarettes sold in this country are manufactured by parties to the settlement agreement. This bill requires tobacco product manufacturers who do not enter into the master settlement agreement, to pay certain sums to the state for each pack sold into this state, to be placed into an escrow fund to ensure that the state will have an eventual source of funds for recovery from them if they are later found to have acted culpably. The committee amendment consists of some minor

technical corrections recommended by the attorney general's office. The committee of Ways and Means recommends this bill as ought to pass with amendment.

### **Amendment adopted.**

### **Ordered to third reading.**

**SB 30**, relative to the cruelty to animals law. Wildlife and Recreation Committee. Vote 7-0. Ought to pass with amendment, Senator Wheeler for the committee.

**1999-0767s**

**08/09**

### **Amendment to SB 30**

Amend the bill by replacing section 1 with the following:

1 Cruelty to Animals; Investigating Officer and Veterinarian. Amend RSA 644:8, IV-a to read as follows:

IV-a.(a) Except as provided in subparagraph (b) any appropriate law enforcement officer, animal control officer, or officer of a duly licensed humane society may take into temporary protective custody any animal when there is probable cause to believe that it has been abused or neglected in violation of paragraphs III or III-a when there is a clear and imminent danger to the animal's health or life and there is not sufficient time to obtain a court order. Such officer shall leave a written notice indicating the type and number of animals taken into protective custody, the name of the officer, the time and date taken, the reason it was taken, the procedure to have the animal returned and any other relevant information. Such notice shall be left at the location where the animal was taken into custody. The officer shall provide for proper care and housing of any animal taken into protective custody under this paragraph. If, after 7 days, the animal has not been returned or claimed, the officer shall petition the municipal or district court seeking either permanent custody or a one-week extension of custody or shall file charges under this section. If a week's extension is granted by the court and after a period of 14 days the animal remains unclaimed, the title and custody of the animal shall rest with the officer on behalf of ~~[his]~~ **the officer's** department or society. The department or society may dispose of the animal in any lawful and humane manner as if it were the rightful owner. If after 14 days the officer or ~~[his]~~ **the officer's** department determines that charges should be filed under this section, ~~[he]~~ **the officer** shall petition the court.

(b) For purposes of subparagraph (a) the ~~[appropriate law enforcement]~~ **investigating** officer for ~~[domestic animals, as defined in RSA 436:1, II, or]~~ livestock, as defined in RSA 427:38, III, shall be ~~[a]~~ **accompanied by a** veterinarian licensed under RSA 332-B or the state veterinarian **who shall set the probable cause criteria for taking the animal or animals.**

(c) **Notwithstanding any provision of law to the contrary, for purposes of subparagraph (a), the appropriate law enforcement officer for animals involved in pari-mutuel racing as authorized under RSA 284 shall be the veterinarian appointed under RSA 284:20-c.**

**1999-0767s**

### **AMENDED ANALYSIS**

This bill eliminates the provision that a veterinarian be the enforcement officer to take a non-livestock domesticated animal into protective custody upon a finding of probable cause of cruelty to animals.



The bill requires the investigating officer be accompanied by a veterinarian licensed under RSA 332-B or the state veterinarian when taking an animal considered livestock into protective custody. The accompanying veterinarian shall set the probable cause criteria for taking the animal.

This bill also determines that the appropriate law enforcement officer for taking animals involved in pari-mutuel racing into custody shall be the veterinarian appointed under RSA 284:20-c.

**SENATOR WHEELER:** Senate Bill 30 clarifies the role of veterinarians in the enforcement of the animal cruelty law. The bill eliminates the requirement that a veterinarian act as the enforcement officer when domestic animals, namely dogs and cats, but not livestock, are taken into protective custody. The amendment on page seven of the calendar requires that when livestock are taken into protective custody, the investigating officer shall be accompanied by a veterinarian, who shall determine the probable cause criteria for taking the animals. In other words, this bill relieves veterinarians from the responsibility of serving as enforcement officers. The intent of the statute is to ensure that animals at risk could be removed from dangerous situations in a timely manner. In most cases, this is a common sense judgement that police, human and animal control officers can make. Senate Bill 30 is in keeping with the original intent of the statute and the committee unanimously recommends ought to pass with amendment.

**Amendment adopted.**

**Ordered to third reading.**

**SB 46-FN**, relative to the applicability of mooring permit requirements. Wildlife and Recreation Committee. Vote 3-1. Inexpedient to Legislate, Senator Krueger for the committee.

**SENATOR KRUEGER:** This bill would apply mooring permit laws to any and all state-owned public waters by January 1, 2002. The laws would apply to waters of 500 acres or more by 2000 and 250 acres or more by 2001 and all waters by 2002. The committee held a very long public hearing and took a great deal of testimony. There was near unanimous opposition to the bill, and little or small public support for it. The majority of the committee concluded that the bill was unnecessary. Many bodies of water are governed by effective authorities, which address and resolve problems when they arise. On lakes where problems persist, the mooring permit law could be applied to those bodies of water. It is not necessary to apply the law to each and every state owned body of water; therefore, the majority of the committee recommended inexpedient to legislate. I would like to add, Mr. President, that there was also concern in the committee that people who had deeded beach access would be prohibited from mooring boats, so there was some questions asked.

**Senator Russman moved to recommit.**

**Adopted.**

**SB 46-FN is recommitted to the Wildlife and Recreation Committee.**

**Senator Roberge is in opposition to the committee report of inexpedient to legislate.**

**SB 61**, relative to the definition of ski craft. Wildlife and Recreation Committee. Vote 3-1. Inexpedient to Legislate, Senator Klemm for the committee.

SENATOR KLEMM: I would like to rerefer this bill back to committee. I would also like to defer to Senator Johnson.

SENATOR JOHNSON: I would like to speak to that motion being the prime sponsor of this bill. Senate Bill 61, as amended, addresses the issues of personal watercraft. Since the last time that we debated the issue there have been dramatic changes in the numbers of PWCs, the increase in horse power, additional safety concerns, suggested recommendations by the federal government, environmental issues and our definition in New Hampshire of PWCs, which is different than all of the other states. Senate Bill 61 is supported by the Department of Safety, Fish and Game, Department of Environmental Services and the Public Water Access Advisory Board. I am sorry to say that due to other legislative considerations, we were not able to spend the time necessary to bring a comprehensive report before the body, and we apologize for that and hence request for interim study to make that happen for the next session. Our preference is to be proactive rather than reactive. I have discussed this approach with the Wildlife and Recreation Committee chairman, Senator Disnard as well as the other Senators who voted on the bill as inexpedient to legislate, and they have no objection to the motion of interim study. I would appreciate your support for the substitute motion of rerefer to committee for interim study. Thank you, Mr. President.

**Senator Klemm moved to rerefer.**

**Adopted.**

**SB 61 is rereferred to the Wildlife and Recreation Committee.**

**SB 145-FN-A**, relative to state financial aid for state fairs, and making an appropriation therefor. Wildlife and Recreation Committee. Vote 4-0. Ought to Pass, Senator Krueger for the committee.

SENATOR KRUEGER: This bill would restore state financial aid to state fairs. There are 11 fairs held around the state each year. In 1998 about 800,000 people attended these fairs. They contribute between \$19 and \$22 million to the economy. They enrich the mix of tourist attractions and they are an important part of our heritage. State financial support began in 1812 and ended in 1987. This is an economic development issue. The cost of running fairs, providing security, maintaining buildings, awarding premiums, property taxes and so on have increased. Competition from other forms of entertainment and recreation has grown. This bill would invest \$250,000 in each year of the upcoming biennium in state fairs. It is a wise investment. I just want to add that in the 1980's, we were contributing \$350,000 to state fairs, so this is not even that much. We have 2 percent farmers in this state, and I would like to think that the 98 percent of the people that don't have exposure to farms would have it through state fairs. I recommend ought to pass.

SENATOR RUSSMAN: Senator Krueger, I assume that they were giving this amount of money back in the 1800's commencing with our salaries, is that safe to say?

SENATOR KRUEGER: Of course. This is true. I believe that the figure of \$350,000, Senator Russman, was in the 1980's matter of fact. In the 1800's I just want to say that it was 2 percent others and 98 percent farmers, but I do thank you for that.

SENATOR RUSSMAN: I assume that means that we are going to have a kind of rebirth of a number of state fairs that we didn't have before?

SENATOR KRUEGER: Well, that is an excellent question. I am not sure of the answer, but I can tell you that we lost, as a matter of fact, five or six state fairs in the past ten years. The people who testified led us to believe that there certainly might be a surge of interest from those towns. But it is amazing, for example, Cheshire county gets \$38,000 worth of property tax that the Cheshire Fair pays. In Hopkinton, it is \$27,000, so it is enormous.

SENATOR GORDON: I just wanted to rise in support of the bill. I live in Senate District two, and it is the home of the North Haverhill Fair as well as the North Belknap County Fair, but was also, not very long ago, the home of the Plymouth Fair, which is as many of you know, now defunct. The fact is that many of these fairs run on a shoestring. Many of them are at risk of closing. The only problem that I have with this bill right now is that I don't think that it is enough money. The one thing that I would say is that when this goes to Finance, which I would presume that it will, I would hope that the Finance Committee looks at this and perhaps doubles the appropriation. Thank you.

SENATOR LARSEN: As a cosponsor of this bill, I also want to say that one of the fairs which has survived very strongly is the Hopkinton Fair, and it is important for us to pass this bill and provide the kind of funding that will make sure that it continues on into the future. Thank you.

SENATOR MCCARLEY: The Rochester Fair, which I believe is about 125 years old and in terms of the shoestring issue, it is absolutely true. What has been amazing about the Rochester Fair in the past several years is, that it has become very involved with the school system in terms of getting kids there and doing a lot more things with the schools. They have a wonderful poster contest that our high school art students all get to compete in, and that becomes the poster for the fair. It is true, they are in desperate, desperate need for some funding. I would be happy to go with Senator Gordon. I know that I missed the vote in the Wildlife and Recreation Committee, but I agree with Senator Gordon. Thank you.

SENATOR TROMBLY: Senator McCarley, my father tells me that the Rochester Fair did quite well when it had girlie-girlie shows. Would you consider reinstituting those perhaps to raise money on a voluntary basis?

SENATOR MCCARLEY: I would have to say, Senator Trombly, that by the time that I began going to the Rochester Fair, those were no longer there and I haven't missed them, so I probably would not be supportive of them.

**Adopted.**

**Referred to the Finance Committee (Rule #24).**

**SB 194-FN-A**, dedicating certain sums in the moose management fund for the payment for damage done by moose to certain trees. Wildlife and Recreation Committee. Vote 4-1. Inexpedient to Legislate, Senator Disnard for the committee.

SENATOR DISNARD: This bill would authorize the executive director of the Fish and Game Department to apply up to \$50,000 from the Moose Management Fund per year, compensating property owners for damage caused by moose. The Fish and Game Department opposed the bill. The Department prefers to prevent damage to orchards and crops rather than to continually compensate growers. The department has sought to replace **TAPE CHANGE** The department has been working with growers to begin an effective fencing program to protect orchards from deer



damage — while this is moose. The bill is contrary to the department's philosophy on ethics. I would like to read a portion of information that we received at the hearing, as I think that it might point something out. "In dealing with the notion of damage compensation, it is important to acknowledge that wildlife resources belong to all of the people of New Hampshire and that wildlife is managed by a wide diversity **TAPE INAUDIBLE**. Who owns wildlife? Department Wildlife Stewardship responsibilities do not equate wildlife owners. The state manages wildlife in accordance with social desires as evidence by our comprehensive public input process. This point is well illustrated by the department efforts to strike a balance between the competing interest of the north country tourism, wildlife viewers and hunters concerned about the over harvest of moose, and motorists concerned about the under harvest of moose. As further evidence of this point, I have expressed intent in 1997 was to reduce the moose numbers in the north region by 20 percent. These were adjusted to 10 percent, because the people in the North Country, the restaurant owners, the motel and hotel owners were upset because they would lose money if there were fewer moose for them. So I wish to point out to you...Also in the House on the same day that this was being discussed, the House Wildlife Committee recommended ought to pass on a bill to the House floor, which hasn't come up yet, HB 704, that would allocate funding from the Fish and Game Department to the year 2010 in order to fund a cost share fencing program. This proposed bill, in the House, would cover fence materials and installation, and would obligate Fish and Game to pay for 75 percent of the cost and the growers would contribute 25 percent. **TAPE INAUDIBLE** I urge you to agree with the committee report.

SENATOR F. KING: I introduced this bill at the request of two of my constituents specifically. I guess not everyone understands how things are in the North Country. If anyone thinks that you can build a fence around a Christmas tree plantation or around a maple sugar orchard to keep moose out, they don't understand how things are in the North Country. One of my constituents has a maple sugar orchard, and every spring, I can count on a call from this gentleman because the moose wander through his maple sugar orchard and take down the pipelines. He not only loses some of the sap that he needs to make the maple syrup, but also it costs him a lot of money to restore the pipelines. A couple of years ago another constituent who was in the business of raising Christmas trees took me to visit his plantation, and it happens to abut some land that is the property of my sons. The moose had eaten the tops off of many, many, many nearly mature Christmas trees. Now a mature Christmas tree is worth about \$8 on the stump, and it requires about 8 to 10 years depending on the soil conditions to grow to a marketable tree. The moose fund generates about a half a million a year from the permits. If you want to apply for a permit that costs you a fee and if you want a license, you pay an additional fee. That fund was looked at by the Fiscal Committee last year, and I was surprised to see how much money was in there, but I was also surprised to see how the money was being spent, so clearly there are funds being paid by moose hunters into this fund that would be readily available for the moose damage. Now the moose belong to the people, but the Christmas trees that this gentleman has spent many years and a lot of money and a lot of hard work growing, belong to him. I think that it is reasonable to assume that if it is appropriate to fence apple orchards to keep deer out, that we ought to find a way to help the people that I am talking

about recover some of the costs that they lose to the moose who kind of trespass on their property. I realize that this is not a popular issue in Concord and Manchester, but it is a very big issue in Coos County.

SENATOR FRANCOEUR: Senator King, I have a couple of questions for you. First, is their land currently posted, of these two individuals that you spoke about?

SENATOR F. KING: Moose can't read. I thought that everybody in Concord knew that.

SENATOR FRANCOEUR: It must be a North Country joke.

SENATOR F. KING: Excuse me for being facetious. No the land is not posted for hunters. The land is open for hunters. Yes it is.

SENATOR FRANCOEUR: Okay. Thank you, Senator King. Second question, I know that in deer hunting, the department allows if a farmer has excessive deer on the property...to be able to allow to go out and take some of those or to issue permits to those to go in and take care of that area. Are you aware that this is possible or not with moose?

SENATOR F. KING: I am not sure that someone could harvest moose off of someone's property.

SENATOR FRANCOEUR: Like the department would issue a license for a hunter to go on the land.

SENATOR F. KING: I believe that would be up to the former Fish and Game Commissioner to answer that question. I am not sure.

SENATOR TROMBLY: Senator King, since you do make a case, do you think that maybe this is an obligation that the state should look to fund out of the general fund, given the fact that your point that the moose do belong to the state and perhaps the state's obligations should come from the general fund to do this. Have you have ever thought of investigating that?

SENATOR F. KING: I haven't and I don't believe that it should come out of the general fund. That would be a bad precedence. I think that clearly that the moose fund was set up for a very specific purpose, to control and... the law that sets the fund up speaks about one of the functions to manage the herd. I would suggest that this is part of the management of the herd. These landowners do make their land available for multiple use of recreation, and it just seems that it would not be unreasonable to take a percentage of that money and help to take care of the damage. I know the gentlemen that is having the problem with the pipeline, if he got \$2,500 he would think that was a substantial amount of money. The Christmas tree person, I am not sure of, but they are not looking to break the bank, but I think that they have a justified claim against the state. This is the logical place to get the money, the money is there and it is paid in there by people who love moose, and it just seems like the right thing to do. I appreciate the one vote that I got, certainly.

SENATOR LARSEN: Senator King, in your statement, you said that you knew that it probably wasn't a big problem in Concord. Moose have been known to wander through the neighborhood that I live in, and there are moose in fact in the area, but what is a bigger problem for Concord and I think maybe some of the other southern parts of the state, is deer damage. I would agree that...would you believe that I would agree with you that moose damage and deer damage is a responsibility of the wildlife fund and I believe that it should, in fact, be something which the state and the department recognizes?

SENATOR F. KING: I would agree with you. Thank you.

SENATOR SQUIRES: I rise to propose a sort of speculative question here. I wonder what would be the response if this bill read as follows, except after the two in the second sentence: "Certain human beings." This is a big issue with me, because a few years ago, I hit a moose. There are a lot of them up there and this was frightening. I was on rt. 89, and it is such an issue that in fact, the Department of Surgery at Hitchcock has a paper on the subject about what happens when you hit a moose. I can tell you that it is not good. It was at twilight, and I went under this beast. He just slid along the hood and fortunately hit the post and was thrown off and dispatched. I just have to raise the question that we are concerned about a certain two species of trees, maple trees and Christmas trees, but there are human beings here. I guess that my idea would be that you could have some amount, up to \$1,000, if they don't have insurance to offset the cost of the damage. It is not against the trees, Senator King. I get a Christmas tree every year, but there is an issue of priorities here. Thank you.

SENATOR RUSSMAN: I would like to know to where the moose was dispatched after he kind of slid along?

SENATOR SQUIRES: Well the moose ended up in the dividing line. I must say that the police officer offered me this carcass. Now here I am sitting in my shattered car, and this guy says, "this is your right to have this 300-400 pound beast." I declined. He was dead in the intervening lane.

SENATOR RUSSMAN: Well, it is good to see that there is kind of a throw-back to ancient times here. I wish some of us would have known about that, but certainly, my guess is that the fellow that is going to get the \$2,500 probably can actually stop harvesting the sap, because he probably makes that much money. I don't know if he makes that much money in a year harvesting. I know that in the deer population, I have a problem believe it or not, in Derry, with deer. The owner of J. & F. Farms called me and they have so many deer in the fields, that he would have the hunters come in, but they are so close to the houses in Derry, that they can't have a hunt down, so he is concerned about the house bill that is coming over. I think that having said that, certainly up in the North Country, there aren't probably that many houses, so that he probably could get a contract with McDonald's and have up in the north country, a special for the tourists, the Moose Burger. I think that we ought to support Senator King in his effort. This is obviously an important bill, and we know important bills when they come along, and I think that this is important. I am going to vote to support this, and to overturn the committee's report and support my fellow Senator from the North Country.

SENATOR WHEELER: I think that I am the "one". I think that it is an issue of fairness, and that we have this moose fund, and I think that we have been encouraging the population of moose and when moose do damage because there are a lot of moose, I think that we ought to take it out of the moose fund. So I think that it is a good bill.

SENATOR FERNALD: We have a lot of animals in this state and I guess that they all belong to the state by some technical legal sense, and a lot of them can cause damage, not just deer, but beavers can cut down trees and coyotes can kill sheep. I think that we are opening a can of worms if we are going to start compensating everybody every time any piece of wildlife does something that somebody doesn't like. I will vote against it in spite of all that has been said.



SENATOR F. KING: I believe, Senator Fernald, that there are other funds available for compensation of other animals. If you have bear damage, a bear kills your pet heifer, you get paid for that pet heifer. So this is not something new, this is something that the state has had in the past.

SENATOR FERNALD: Maybe what I would suggest is that we send this back to committee and lets have an overall approach to animal damage rather than bits and pieces.

### **SUBSTITUTE MOTION**

**Senator F. King moved to substitute ought to pass for inexpedient to legislate.**

SENATOR BROWN: Senator King, could you clarify for us, are other funds available now for other animal damages that are done through Fish and Game?

SENATOR F. KING: I believe that Senator Disnard who is a former Fish and Game commissioner, could answer that better than I.

SENATOR DISNARD: Would you believe that I am not sure that the present law for the moose fund set up by law or any kind of fund would allow this type of money to go to pay for that. Secondly, yes, there is a program now funded partly by the federal government and funded partly by some sales of equipment and partly by the fish and game department.

**Question is on the substitute motion of ought to pass.**

**A roll call was requested by Senator Below.**

**Seconded by Senator Francoeur.**

**The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Roberge, Squires, Pignatelli, Larsen, Brown, J. King, Russman, Wheeler, Hollingworth, Cohen.**

**The following Senators voted No: Trombly, Disnard, Blaisdell, Fernald, Francoeur, Krueger, D'Allesandro, Klemm.**

**Yeas: 16 - Nays: 8**

**Adopted.**

**Ordered to third reading.**

**SB 213-FN, changing the name of the fish and game department to the wildlife department. Wildlife and Recreation Committee. Vote 4-2. Inexpedient to Legislate, Senator D'Allesandro for the committee.**

SENATOR D'ALLESANDRO: This bill would change the name of Fish and Game Department to the Wildlife Department to more accurately reflect that it is responsible for all wildlife, not merely species that might be caught or shot. The Fish and Game Commission opposed the bill, but expressed its willingness to study the issue. Those who financed the department with their fishing and hunting licenses opposed the bill. This bill raises issues about the essence and purpose of the department. Sportsmen fear that a name change would change the focus of the department that they pay for. Other insists that the department's responsibility is already extended beyond raising and protecting games species. The committee felt that changing the name of the department at this time was more likely to increase rather than

to decrease the differences among the department's different constituencies; therefore, a majority of the committee recommends inexpedient to legislate.

**SENATOR WHEELER:** I think that what we heard over the last bill and including what we just heard on this bill, that there is ample reason for realizing that Fish and Game does far more than fish and game. In the laws that we passed last year where we gave them exclusive authority over all of the beast of the field and fowl of the air and fish of the sea, I think under those circumstances, that it is only appropriate to change the name to wildlife. So I encourage you to go against the committee report. Thank you.

**Question is on the motion of inexpedient to legislate.**

**A roll call was requested by Senator Roberge.**

**Seconded by Senator Pignatelli.**

**The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Squires, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Klemm, Hollingworth, Cohen.**

**The following Senators voted No: Roberge, Pignatelli, Wheeler.**

**Yeas: 21 - Nays: 3**

**Committee report of inexpedient to legislate is adopted.**

**Recess.**

**Senator Blaisdell in the Chair.**

### **REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bills:

**HB 227**, establishing a committee to study the maintenance of voter checklists.

**HB 253**, allowing ballots to be examined and counted prior to the opening of polls on election day.

**Senator D'Allesandro moved adoption.**

**Adopted.**

### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in its amendment to the following entitled House Bill sent down from the Senate:

**HB 249**, relative to the membership of the rivers management advisory committee.

### **ANNOUNCEMENTS**

#### **RESOLUTION**

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time and that the bills ordered to third reading be read a third time by this resolution and all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

**LATE SESSION****Third Reading and Final Passage**

**SB 30**, relative to the cruelty to animals law.

**SB 67**, limiting liability resulting from the use of automatic external defibrillation.

**SB 70**, changing the safe drinking water standard for MTBE.

**HB 79**, relative to reports to the bank commissioner and to safe deposit box openings.

**HB 80**, making technical corrections in the banking laws.

**SB 81**, permitting the city of Manchester to issue bonds to finance unfunded liability of the city's employee pension system.

**SB 86**, relative to enforcement of the collection and payment of county taxes by the county treasurer.

**SB 135-FN**, relative to the water supply land protection grants.

**SB 141**, relative to information not subject to the right-to-know law.

**SB 159**, relative to early reduction of greenhouse gases.

**SB 165**, relative to the Uniform Trustees' Powers Act.

**SB 168**, adopting a model statute included in the tobacco litigation master settlement agreement.

**SB 194-FN-A**, dedicating certain sums in the moose management fund for the payment for damage done by moose to certain trees.

Senator Johnson moved that the business of the day being completed, that the Senate now adjourn to the Call of the Chair.

**Adopted.**

**Adjourned to the Call of the Chair.**

*April 20, 1999*

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by Rev. David P. Jones, Senate Chaplain.

*Lord, either you aren't speaking or we aren't listening. The first is possible but the second is more likely. Give us quiet hearts, attentive ears, courageous principles and a humble spirit. Change our minds when we are wrong and stiffen our resolve when we are right and show us how to avoid forming ourselves into a circular firing squad.* Amen

Senator Francoeur led the Pledge of Allegiance.

**INTRODUCTION OF GUESTS****HOUSE MESSAGE**

The House of Representatives has passed bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 61**, relative to political contributions by members of the ballot law commission.

**HB 69**, relative to the definition of employee under certain labor laws and relative to overtime pay for hourly employees.



**HB 94**, relative to enforcement of the child passenger restraint law.

**HB 230**, clarifying the waste reduction goals for the state of New Hampshire.

**HB 278**, relative to scheduling of district court sessions.

**HB 313-FN**, relative to the regulation of the practice of optometry.

**HB 318**, relative to recovery of costs in utility proceedings and relative to the appointment of public utilities commissioners.

**HB 362**, relative to dam safety program violations.

**HB 366**, repealing the requirement that persons filing for a primary on the last day of the filing period do so in person.

**HB 374**, relative to the order of names on presidential primary election ballots.

**HB 388**, relative to telephone number conservation and area code implementation.

**HB 397**, establishing a 4-year term for the commissioner of the department of corrections, and clarifying the process of appointing personnel under the commissioner.

**HB 435**, relative to disclosure by sellers of consumer goods and services.

**HB 442**, relative to charitable gift annuities.

**HB 448**, relative to the board of dental examiners and the regulation of dentists and dental hygienists.

**HB 454**, requiring the university system of New Hampshire board of trustees to initiate a study of the status of veterans' access to higher education within the university system.

**HB 491**, relative to qualifying examinations for individuals seeking driver's licenses, and driver education course requirements.

**HB 519-L**, requiring law enforcement agencies to adopt written policies regarding emergency responses and vehicular pursuits.

**HB 527**, relative to the duties of the public utilities commission.

**HB 541**, establishing a committee to study the upgrade of Routes 11 and 140.

**HB 554**, relative to driver education reciprocity.

**HB 556-FN**, relative to transporting hazardous waste.

**HB 557-FN**, relative to hazardous waste permitting and container identification.

**HB 563**, relative to names of limited liability partnerships and companies and cooperative associations.

**HB 566**, relative to the supervision of the driver education program.

**HB 570**, restricting a presiding judge's authority to interrupt jury deliberations.

**HB 573**, clarifying the status of class VI highways.

**HB 592**, creating a study committee regarding requirements for and usage of methyl t-butyl ether.

**HB 593-FN-L**, relative to the classification of class VI roads which have been maintained by a town.

**HB 620-FN**, relative to election of vested deferred retirement status for inactive members of the retirement system.

**HB 624-FN**, establishing a committee relative to health care quality.

**HB 634-FN**, eliminating the requirement that retirement system disability recipients notify the board of trustees of unreduced social security disability benefits.

**HB 651**, revising the speed limit law.

**HB 667**, relative to the quorum required for sessions of the supreme court.

**HB 672-FN-A-L**, relative to creating a master plan for Hampton Beach and Hampton State park to deal with growth.

**HB 675-FN**, extending the applicability of postsecondary educational assistance for New Hampshire national guard members and requiring an annual reporting from state-supported postsecondary institutions.

**HB 686-FN**, defining the state heritage collections committee's responsibilities and the process for acquiring or disposing of items and collections.

**HB 687-FN**, establishing the criminal offense of identity fraud.

**HB 714-FN**, changing the potential penalties for certain acts of solicitation and conspiracy to commit murder and attempted murder to life in prison.

**HB 721-FN**, relative to procedures regarding delinquent children under RSA 169-B.

## INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 61- 721 be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

**Adopted.**

### First and Second Reading and Referral

**HB 61**, relative to political contributions by members of the ballot law commission. **Public Affairs.**

**HB 69**, relative to the definition of employee under certain labor laws and relative to overtime pay for hourly employees. **Insurance**

**HB 94**, relative to enforcement of the child passenger restraint law. **Judiciary**

**HB 230**, clarifying the waste reduction goals for the state of New Hampshire. **Environment**

**HB 278**, relative to scheduling of district court sessions. **Judiciary**

**HB 313-FN**, relative to the regulation of the practice of optometry. **Executive Departments and Administration**

**HB 318**, relative to recovery of costs in utility proceedings and relative to the appointment of public utilities commissioners. **Executive Departments and Administration**

**HB 362**, relative to dam safety program violations. **Wildlife and Recreation**

**HB 366**, repealing the requirement that persons filing for a primary on the last day of the filing period do so in person. **Public Affairs**

**HB 374**, relative to the order of names on presidential primary election ballots. **Public Affairs**

**HB 388**, relative to telephone number conservation and area code implementation. **Internal Affairs**

**HB 397**, establishing a 4-year term for the commissioner of the department of corrections, and clarifying the process of appointing personnel under the commissioner. **Executive Departments and Administration**

**HB 435**, relative to disclosure by sellers of consumer goods and services. **Energy and Economic Development**

**HB 442**, relative to charitable gift annuities. **Banks**

**HB 448**, relative to the board of dental examiners and the regulation of dentists and dental hygienists. **Executive Departments and Administration**

**HB 454**, requiring the university system of New Hampshire board of trustees to initiate a study of the status of veterans' access to higher education within the university system. **Education**

**HB 491**, relative to qualifying examinations for individuals seeking driver's licenses, and driver education course requirements. **Transportation**

**HB 519-L**, requiring law enforcement agencies to adopt written policies regarding emergency responses and vehicular pursuits. **Internal Affairs**

**HB 527**, relative to the duties of the public utilities commission. **Executive Departments and Administration**

**HB 541**, establishing a committee to study the upgrade of Routes 11 and 140. **Transportation**

**HB 554**, relative to driver education reciprocity. **Transportation**

**HB 556-FN**, relative to transporting hazardous waste. **Environment**

**HB 557-FN**, relative to hazardous waste permitting and container identification. **Environment**

**HB 563**, relative to names of limited liability partnerships and companies and cooperative associations. **Banks**

**HB 566**, relative to the supervision of the driver education program. **Transportation**

**HB 570**, restricting a presiding judge's authority to interrupt jury deliberations. **Judiciary**

**HB 573**, clarifying the status of class VI highways. **Transportation**

**HB 592**, creating a study committee regarding requirements for and usage of methyl t-butyl ether. **Environment**

**HB 593-FN-L**, relative to the classification of class VI roads which have been maintained by a town. **Transportation**

**HB 620-FN**, relative to election of vested deferred retirement status for inactive members of the retirement system. **Insurance**

**HB 624-FN**, establishing a committee relative to health care quality. **Public Institutions, Health and Human Services**

**HB 634-FN**, eliminating the requirement that retirement system disability recipients notify the board of trustees of unreduced social security disability benefits. **Insurance**



**HB 651**, revising the speed limit law. **Transportation**

**HB 667**, relative to the quorum required for sessions of the supreme court. **Judiciary**

**HB 672-FN-A-L**, relative to creating a master plan for Hampton Beach and Hampton State park to deal with growth. **Energy and Economic Development**

**HB 675-FN**, extending the applicability of postsecondary educational assistance for New Hampshire national guard members and requiring an annual reporting from state-supported postsecondary institutions. **Education**

**HB 686-FN**, defining the state heritage collections committee's responsibilities and the process for acquiring or disposing of items and collections. **Energy and Economic Development**

**HB 687-FN**, establishing the criminal offense of identity fraud. **Judiciary**

**HB 714-FN**, changing the potential penalties for certain acts of solicitation and conspiracy to commit murder and attempted murder to life in prison. **Judiciary**

**HB 721-FN**, relative to procedures regarding delinquent children under RSA 169-B. **Public Institutions, Health and Human Services**

### NOTICE OF RECONSIDERATION

Senator Wheeler moved reconsideration on **SB 194-FN-A**, dedicating certain sums in the moose management fund for the payment for damage done by moose to certain trees.

### COMMITTEE REPORTS

**HCR 6**, calling on the President and the Congress to fully fund the federal government's share of the average per pupil expenditure in public elementary and secondary schools in the United States under the Individuals with Disabilities Education Act. Education Committee. Vote 9-0. Ought to Pass, Senator J. King for the committee.

SENATOR J. KING: This resolution urges congress to meet its obligation under the 1975 Individuals with Disabilities Education Act to fund 40 percent of the cost of providing an appropriate public education of children with disabilities. Early in this session the Senate passed a similar one SCR 2. IDEA was enacted in 1975 and became effective in 1978. New Hampshire has been complying with the federal requirements and congress has never fulfilled its obligation. Although New Hampshire has put in place the infrastructure, the programs and personnel to provide these, congress has continued to avoid its responsibility. The added burden on the school districts to make up for the federal shortfall was obvious. Our legislature is in the midst of making some very difficult decisions about how to meet the state obligation to fund public education. We need to know the commitment at the federal level will be honored. New Hampshire has made significant progress in meeting the challenge of providing appropriate public education for special needs students. Now is the time for congress to come through. I urge your strong support for this bill. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 250**, relative to authorized regional enrollment area schools. Education Committee. Vote 8-0. Ought to Pass, Senator Johnson for the committee.

**SENATOR JOHNSON:** House Bill 250 was introduced at the request of school administrative units involved in area agreements. The bill extends the length of time an area plan is valid to either ten years or the length of the longest outstanding bond issue. The bill also gives districts contemplating withdrawal from an area agreement an additional 60 days to submit their feasibility report to the state board of education. School districts are finding that 120 days was an insufficient amount of time for a thorough evaluation of the issues surrounding a potential withdrawal and felt that 180 days would be more appropriate. The Education Committee unanimously voted this bill as ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 13**, establishing a committee to study joint maintenance agreements in school districts. Education Committee. Vote 9-0. Ought to pass with amendment, Senator Johnson for the committee.

**1999-0829s**

**04/09**

### **Amendment to SB 13**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to the bonding authority of joint boards in joint maintenance agreements and relative to the eligibility of joint maintenance agreement districts for school building aid.

Amend the bill by replacing all after the enacting clause with the following:

1 School Districts; Joint Maintenance Agreements Amended. Amend RSA 194:21 to read as follows:

194:21 Joint Maintenance.

**I.** Two or more adjoining districts in the same or different towns may make contracts with each other for establishing and maintaining jointly a high or other public school for the benefit of their pupils, and may raise and appropriate money to carry the contracts into effect; and their school boards, acting jointly or otherwise, shall have such authority and perform such duties in relation to schools so maintained as may be provided for in the contracts.

**II.** *The joint board shall be authorized to incur indebtedness by the issuance and sale of bonds or notes, or otherwise, in the name of the joint district subject to approval by the legislative body of the respective districts pursuant to RSA 33. The joint board shall be authorized to engage in collective bargaining pursuant to RSA 273-A and to hire staff in the name of the joint district, as may be necessary.*

2 School Building Aid; Amount of Annual Grant; References Amended. Amend RSA 198:15-b, I to read as follows:

**I.** The amount of the annual grant to any school district duly organized, any city maintaining a school department within its corporate organization, any cooperative school district as defined in RSA 195:1, or any receiving district operating an area school as defined in RSA 195-A:1, shall be a sum equal to 30 percent of the amount of the annual payment of principal on all outstanding borrowings of the school district, city, coop-

erative school district, *joint maintenance agreement*, or receiving district, heretofore or hereafter incurred, for the cost of construction or purchase of school buildings and school administrative unit facilities, to the extent approved by the state board of education, provided that any school district may receive an annual grant in the amount of 40 percent for the construction of an educational administration building for school administrative unit, and provided that the amount of the annual grant in the case of a cooperative school district, *joint maintenance agreement*, or a receiving district operating an area school, shall be 40 percent plus 5 percent for each pre-existing district in excess of 2 and each sending district, in excess of one, and provided further that no cooperative school district, *joint maintenance agreement*, or receiving district operating an area school, shall receive an annual grant in excess of 55 percent.

3 Repeal. RSA 198:15-b, VI, relative to a joint maintenance agreement among the Barnstead, Pittsfield, or Gilmanton school districts, or any combination thereof, is repealed.

4 Effective Date. This act shall take effect 60 days after its passage.

**1999-0829s**

#### AMENDED ANALYSIS

This bill authorizes school districts which have entered into joint maintenance agreements to incur indebtedness by issuing notes or bonds subject to the approval of the legislative bodies of the respective districts and permits joint maintenance agreement districts to be eligible for school building aid grants. This bill also repeals current law on the formation of a joint maintenance agreement among the Barnstead, Pittsfield, and Gilmanton school districts for the purpose of calculating school building aid.

SENATOR JOHNSON: Senate Bill 13 was substantially amended by the Education Committee and is no longer about establishing a committee to study joint maintenance agreements. This bill now authorizes school districts, which have entered into joint maintenance agreements, to incur indebtedness by issuing notes or bonds subject to the approval of the legislative bodies of the respective districts. Senate Bill 13 as amended also gives joint maintenance entities the right to engage in collective bargaining. Finally, the bill permits joint maintenance agreement districts to be eligible for school building aid grants. The Education Committee voted this bill ought to pass as amended, unanimously.

**Amendment adopted.**

**Ordered to third reading.**

SB 210-FN-L, relative to payment by the state for certain court-ordered placements of special education students. Education Committee. Vote 9-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: Senate Bill 210 requires the state to pay the full costs of special education services provided to all court-ordered out-of-district placements of special education students. This is one of the three bills filed as a result of the special education commission's work last summer and fall. Senate Bill 210 deals with situations where DCYF places a child in an out-of-district facility and the receiving school district must provide unanticipated and unbudgeted special education services. Under the terms of SB 210, the state would have to pay the educational costs directly to the district and then seek reimbursement from the sending school. Under current practice, the receiving school must provide and



pay for all of the educational services up front and then bill for reimbursement from the sending district. While this may have a dramatic impact on our larger schools, it often has a devastating impact on our smaller schools. The Senate Education Committee recommends SB 210 as ought to pass.

**Adopted.**

**Referred to the Finance Committee (Rule #24).**

**HB 288**, relative to the committee to study land management, protection of farmland, rural character, environmental quality and sprawl. Environment Committee. Vote 5-0. Ought to Pass, Senator Wheeler for the committee.

SENATOR WHEELER: Mr. President, I rise in support of HB 288. This bill extends the life of the committee and authorizes the committee to monitor progress of urban sprawl avoidance action in this state. The committee's final report issued in November, 1998 laid the groundwork for several pieces of legislation filed in the current session. These bills will initiate the study of the effects of sprawl, establish a state anti-sprawl policy for state agencies, and provide local planning boards with a tool to prevent sprawl. Although there is no single measure that can effectively address sprawl, continuous diligence is required to implement smart growth or growth that does not harm the economy or the environment. In addition, the governor has issued an executive order requiring state agencies to access the effects of their programs on sprawl. Following the completion of this analysis, further legislation is required to improve smart growth technique, then the committee established by this bill would be well positioned to act. We all want to preserve the special rural character of New Hampshire as our state continues to grow. I urge you to pass HB 288. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 355**, relative to the dredging of harbors and channels. Environment Committee. Vote 5-0. Ought to Pass, Senator Cohen for the committee.

SENATOR COHEN: The Environment Committee voted unanimously in support of HB 355. This bill addresses the difficulty in keeping the Black Water River channel near the Seabrook and Hampton Harbor navigable. This bill would allow the port authority to do maintenance dredging between major dredges and off years. HB 355 does not make dredging mandatory, but leaves this decision to the discretion of the port authority. The change of the tides of the Black Water River is a source of additional sand and silt deposits, and it is necessary to keep this channel open for commercial fishermen in this area of the seacoast. In addition, the office of the state planning is working with the University of New Hampshire why Black Water River is experiencing changing tides causing the build up of silt deposits, which necessitate this additional dredging. This is an important bill, which will help maintain the harbor for our commercial fishermen on the seacoast. I urge you to pass HB 355. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 210**, reinstating the corporate charter of C.A.B. Real Estate, Inc. Executive Departments and Administration Committee. Vote 4-0. Ought to pass with amendment, Senator Brown for the committee.

1999-0855s

08/09

**Amendment to HB 210**

Amend the bill by replacing section 1 with the following:

1 Reinstatement of Corporate Charter of C. A. B. Real Estate, Inc. The charter of C. A. B. Real Estate, Inc., of Rochester, New Hampshire, incorporated on July 6, 1971, was forfeited on July 2, 1973, under 1973, 516:1. Upon payment of any fees in arrears, a reinstatement fee of \$135 under RSA 293-A:1.22(a)(7), the filing of any annual reports required by law, the filing of an affidavit with the secretary of state stating that there are no lawsuits pending against the corporation, and obtaining a certificate of good standing from the department of revenue administration, C. A. B. Real Estate, Inc. shall be reinstated for all purposes as a New Hampshire corporation. This reinstatement shall be retroactive to July 2, 1973.

SENATOR BROWN: C. A. B. Real Estate, Inc., inadvertently let their charter lapse in 1973 and was not aware of the lapse. This bill reinstates their charter back to the time of that lapse. The company still has to pay any fees owed during the period that they didn't have a charter. Reinstating the charter will ensure that all actions taken by the company during the period that the charter was lapsed will have legal standing. The committee recommends this bill as ought to pass as amended. Thank you.

**Amendment adopted.**

**Ordered to third reading.**

**HB 218-L**, reinstating the corporate charter of Approved Industries, Inc. Executive Departments and Administration Committee. Vote 4-0. Ought to Pass, Senator Brown for the committee.

SENATOR BROWN: This bill reinstates the charter of Approved Industries, Inc. which inadvertently lapsed in 1983. The reasons for this bill are much the same as the last bill, HB 210, and the committee recommends this bill ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 490**, enabling cities to permit the mayor to vote at city council meetings. Executive Departments and Administration Committee. Vote 6-0. Ought to Pass, Senator Roberge for the committee.

SENATOR ROBERGE: Mr. President and members of the Senate, this bill allows mayors to vote at city council meetings in those cities that have council appointed or elected mayors. State law at this time, overrides some city charters by not allowing the mayors to vote at council meetings. Without this piece of legislation, each city would need individual permission from the legislature to allow the mayor to vote at council meetings. This bill preserves the local option for organizing local government. The committee recommends ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 193-FN**, relative to holiday pay for certain state employees. Executive Departments and Administration Committee. Vote 4-3. Ought to pass with amendment, Senator Pignatelli for the committee.

1999-0854s

10/01

**Amendment to SB 193-FN**

Amend the bill by replacing section 1 with the following:

1 Holiday Pay; Washington's Birthday Added. Amend RSA 98-A:6-b to read as follows:

98-A:6-b Holiday Pay. Notwithstanding any agreement, law, or rule to the contrary, state employees involved in the care of persons in the state mental health system, the department of health and human services, the state prison, the secure psychiatric unit or the veterans' home on a part-time basis who work on New Year's Day, Memorial Day, July 4, Labor Day, Veterans Day, *Washington's Birthday*, Thanksgiving Day, the day after Thanksgiving, or Christmas Day, shall be entitled to holiday pay for the hours worked, provided that such employees shall be required to work the scheduled day before and the scheduled day after such holidays.

1999-0854s

**AMENDED ANALYSIS**

This bill adds Washington's Birthday to the holidays for which certain state employees receive holiday pay.

SENATOR PIGNATELLI: This bill adds the Washington's birthday holiday to the list of paid holidays, that part time employees caring for people in the state mental health system, the Department of Health and Human Services, the state prison, the secure psychiatric unit and the veteran's home can receive when they work on that day. This is an issue of fairness since other state employees are eligible for holiday pay on Washington's birthday. All part time state employees should be allowed to benefit from working on the same holiday as well and this bill provides that equity. The majority of the committee recommends this bill ought to pass as amended.

**Amendment adopted.**

**Ordered to third reading.**

**SB 198-FN**, relative to certification of persons installing and servicing propane gas and heating oil equipment. Executive Departments and Administration Committee. Vote 6-0. Ought to pass with amendment, Senator Pignatelli for the committee.

1999-0851s

08/09

**Amendment to SB 198-FN**

Amend the bill by replacing section 1 with the following:

1 New Sections; Certification of Heating Equipment Installers, Heating Equipment Service Personnel and Gas Piping Installers; Advisory Committee Established. Amend RSA 153 by inserting after section 4-a the following new sections:

153:4-b Certification of Heating Equipment Installers, Heating Equipment Service Personnel and Gas Piping Installers; Penalty.

I. The state fire marshal shall establish a voluntary certification program for certifying the following:

(a) Individuals involved in the installation of residential and commercial heating equipment systems or domestic water heating systems using heating oil, liquefied petroleum gas (propane) or natural gas.



(b) Individuals involved in the servicing and repair of heating equipment and domestic water heating systems using heating oil, liquefied petroleum gas or natural gas.

(c) Individuals involved in the installation of gas piping for heating systems or domestic water heating systems using natural gas or liquefied petroleum gas.

II. The state fire marshal, with the approval of the commissioner of safety, shall adopt rules, pursuant to RSA 541-A, relative to:

(a) The establishment of minimum educational and training standards for heating equipment installers, heating equipment service personnel, and gas piping installers.

(b) The establishment of fees for certification under this section.

(c) All other matters necessary for the proper administration of this section.

III. Whoever falsely claims to be certified under this section through advertising, signage, or verbal representation shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person.

#### 153:4-c Advisory Committee on Heating System Certification.

I. There is established a heating system certification advisory committee appointed by the governor and council.

II. The advisory committee shall assist the state fire marshal in carrying out the duties assigned under RSA 153:4-b by providing advice regarding:

(a) Developing rules under RSA 153:4-b, II.

(b) Implementing the certification program under RSA 153:4-b.

III. The advisory committee shall include:

(a) Two representatives of New Hampshire propane gas supply companies.

(b) Two representatives of New Hampshire natural gas utility companies.

(c) Two representatives of the oil heat industry, one recommended by the Better Home Heating Council of New Hampshire, and one recommended by the New Hampshire chapter of the National Association of Oil Heating Service Managers.

(d) Two representatives of the mechanical trades, one recommended by the New Hampshire chapter of the National Plumbing, Heating and Cooling Contractors Association, and one recommended by the New Hampshire chapter of the Propane Gas Association of New England.

(e) One individual experienced in the training and education of heating system installers, recommended by the commissioner of the regional community-technical colleges.

(f) Two individuals from the public-at-large.

1999-0851s

#### AMENDED ANALYSIS

This bill establishes within the office of the state fire marshal a voluntary certification program for persons installing or servicing heating fuels or heating fuel equipment.

This bill provides penalties for those who falsely claim to be certified heating equipment installers, heating equipment service personnel and gas piping installers.

This bill also establishes an advisory committee to provide advice to the state fire marshal in carrying out the fire marshal's duties under this act.

SENATOR PIGNATELLI: This bill will allow the state fire marshall to set up a voluntary certification program for people who install or ser-

vice heating fuel equipment. Certification of home heating installers will help to insure to the consumer that they have adequate knowledge to assure public safety. This certification process would not only benefit the public, but could be advantageous to those people certified in their attempts to keep up-to-date and to attract business. The amendment creates an advisory board that would oversee the rulemaking process. The board would be made up of representatives of the industry, the technical college system and the public. It also gives the fire marshal the authority to set fees to offset the cost of administering the certification process. Finally, it creates a penalty clause for misuse of a certification or falsely claiming to be certified. The committee recommends this bill as ought to pass as amended. Thank you.

SENATOR FRANCOEUR: As I sat on the Executive Departments and Administration Committee when this bill was heard, I voted to support it. My reasons for that were because this was a voluntary certification. We heard in the testimony from all of the departments and also from those that were present that they didn't oppose a voluntary means of certification, but as far as looking into licensure in the next couple of years, I directly asked Don Bliss from the state fire marshal's office and he said that his office had no recommendation in the next foreseeable future to turn around and fully licensure this. At that point we agreed to support it. I give it my wholehearted support. Thank you.

#### **Amendment adopted.**

#### **Referred to the Finance Committee (Rule #24).**

**SB 143-FN**, relative to penalties for incest. Judiciary Committee. Vote 5-2. Ought to Pass, Senator Brown for the committee.

SENATOR BROWN: Mr. President, the Judiciary Committee voted to pass SB 143 on a vote of 5-2. This bill accomplishes two very important changes to RSA 639:2, the law on incest. The first change is that in the case of an alleged incest, where the victim is under the age of 18, there shall be no statute of limitation. Under current law, the statute of limitations for incest for a victim under 18 is six years after the child reaches the age of majority. Many incest survivors testified in favor of this bill as well as the attorney general's office and representatives from law enforcement. Testimony in favor of removing the statute of limitations for such cases was both persuasive and emotional. The director of the Victim, Witness Assistance from the attorney general's office testified that incest is a crime that is very often not reported for years. Many child victims do not report incest because of guilt, shame and fear of retribution from the offender as well as unwanted public attention on themselves and on their families. Under the current law, often when the victims become adults and gather the mental stability and emotional strength to deal with reporting the crime and the necessary repercussions of such reporting, the statute of limitations has expired. Remember, we are talking about children. Many of these children do not have the ability, knowledge, individual strength and or family support to be able to report incest. As a result, the incest offenders can keep committing this offense many times on one victim after another. One of the bill supporters testified that incest offenders have as many as 100 victims in their lifetime. Senate Bill 143 will allow the victims to obtain permanent protection from the offender, including restraining orders to prohibit further contact, and it will act as a powerful deterrent to future incest offenders. We must protect children and take a strong stance of a policy which will firmly say that this conduct is wrong and we

will not permit, and you will be subjected to a severe penalty even if your victim cannot talk now or is afraid of reporting the crime. The second change proposed by SB 143 is to set a new maximum and minimum sentence for offenders who commit incest when the victim is under the age of 16. Under SB 143 a maximum sentence for such conduct is not to exceed 20 years and a minimum sentence of not more than 10 years. The purpose for this change is to make the penalty for incest consistent with the statutory penalty for sexual assault. This second change is also supported by the attorney general's office and will act as a stronger deterrent than the current maximum penalty of seven years and a minimum of one year. On behalf of the Judiciary Committee, I urge you to pass SB 143.

**SENATOR TROMBLY:** Mr. President and members of the Senate, in the committee report you will see that the vote was 5-2. I rise today to tell the Senate that I have reconsidered my vote, and I think that we ought to pass this piece of legislation. One of the reasons why I have reconsidered is because I gave it some serious thought over this past weekend about what specifically this particular crime was. At the time of the vote, I was thinking of this crime in terms of the crime of sexual assault, but after giving this due consideration, this is a crime of incest. I think that the impetus for them not to speak is greater in a case of incest where they may be removing the father, if the father is the perpetrator against his young daughter. The potential for the father who then may be a grandfather, to revictimize another member of the family, perhaps the victim's own child has given me pause. I think that after due consideration that this is one particular instance where, if you commit that crime, the victimization within your own family as Senator Brown, I think, very, very appropriately put, is too traumatic not to require this bill to pass, so I have changed my mind. I think that we need to pass this bill. This is a bill that is a step for the victims. Mr. President, I rise to change my vote. I will be voting to pass this bill.

**Recess.**

**Out of Recess.**

**Question is on the motion of ought to pass.**

**A roll call was requested by Senator Trombly.**

**Seconded by Senator Brown.**

**The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Roberge, Blaisdell, Fernald, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.**

**The following Senators voted No:**

**Yeas: 24 - Nays: 0**

**Adopted.**

**Referred to the Finance Committee (Rule #24).**

**Recess.**

**Senator Larsen in the Chair.**

**SB 69-L**, relative to healthcare charitable trusts and community benefits. Public Institutions, Health and Human Services Committee. Vote 4-2. Ought to Pass, Senator Wheeler for the committee.

**SENATOR WHEELER:** Inadvertently, the committee amendment to SB 69 that was presented at the time of the hearing, was omitted from the Sen-



ate Calendar today. It is now before you as a floor amendment to SB 69 or it will be before you shortly. It is the result of a working group of all of the stakeholders in this issue. The genesis for this proposal was the report by the Health and Human Services Oversight Committee on the use made by hospitals of the medicaid enhancement funds, which they receive. We felt that the hospitals had not all made a use that was reported in a uniform manner. We wanted to make sure that health care charitable trusts did involve the community in planning their community benefits and did report them in a uniform way. I don't know what the procedure is. I am talking about the floor amendment, and it hasn't actually been offered as of yet. Okay, I realize the fact that I am supposed to be speaking on the motion of ought to pass before we offer the floor amendment, but the bill and the amendment are very, very similar, so I can give the whole policy for the bill and it will also apply to the amendment. This legislation will provide an important opportunity for New Hampshire's health care charitable trusts to report their charitable benefits to the public and to engage the communities that they serve in the participating planning processes which is sure that their charitable resources are directed towards serving identified community needs. The amendment which you will hear is the same as the bill, establishes a uniform, non-bureaucratic method for New Hampshire's health care charitable trusts to develop community benefits programs and a uniform process for reporting on those programs through public filings with the director of charitable trusts in the attorney general's office. We feel that most people in the community do not know what services are available, especially charity care to them. And they don't know enough about those whose mission it is to provide quality care, both providers don't always understand the needs of the community. A community benefits plan developed with citizen's input will promote a strong health care partnership. A partnership of this nature between providers and consumers will bring about programs designed to address the needs of each specific community. Given the demographic diversities that often exist among communities, these needs may vary throughout the state. Consequently, in order to provide benefits most important to each community, an organization must first engage in a process to identify those needs within the area that it serves. In addition, the process and reporting requirements of SB 69 will help ensure that benefits are well targeted and uniformly reported. This bill does not require any specific level **TAPE CHANGE**

**SENATOR KRUEGER:** **TAPE CHANGE** is being done by these organizations will receive unnecessary scrutiny and the definition of community service may be somewhat muddled. I feel that these organizations, and certainly in the case of charitable trusts, are not just well documented, but well managed by usually volunteer, nonprofit boards of people from the community who would be able to see obviously, if there was an incorrect direction or a non-fulfilled promise made to that very same community. So for those reasons, Madame President, I rise in opposition to this bill, and I plan to vote against it.

**SENATOR GORDON:** I am going to vote against the bill. I think that the amendment is fine and if we get to that point I will vote for it. I will tell you why I am going to vote against the bill. I am completely in favor of the concept here, but I think that the concept should apply to hospitals. That in essence was the testimony that I heard in the committee at the public hearing. The attorney general's office came in and said that this should not apply to all charitable trusts. It should apply to

hospitals. What we have done is that we made it too broad and we said that we want it to be all health care charitable trusts. The reason that I am going to vote against is because my local visiting nurse's association is now going to be responsible for filing these reports. We received a letter from the Visiting Nurse's Association, or their unified group, saying that they shouldn't be included in this and I agree with them. They shouldn't be included in this. Let me tell you about the Newfoundland Lake area nursing association. They are under huge financial stress right now, the Visiting Nurse Association. Huge financial stress with the cut backs from the federal government. There isn't a single person in my community that questions their value to the community right now. There isn't one person in my community that is saying "hey you know we need a report from the Newfoundland Area Nursing Association explaining why they are good." There isn't one person in my community asking for that. Now we are going to pass new regulations, new statutes, new rules that says that now they have to take their time even though they are under financial stress and understaffed, to file this new report, to show the community something that the community already knows. They don't want to do it, and I don't think that they ought to have to do it. The hospitals, yes. I think that it is appropriate. They ought to do it. This ought to be limited to the hospitals. That is what the attorney general's office said. So I am going to stand with my Visiting Nurses Association who are opposed to being included in this and I would hope that you would do the same thing and recommit this to the committee and let them take it and make it applicable to the hospitals, not to the Newfoundland Area Nursing Association, and not to these other small charitable groups that are out there, and we know that they are doing a good job.

SENATOR WHEELER: I would like to respond to some of the concerns that have been raised, because certainly these were raised in our working group, which did include representatives of all of the small home health care agencies too. We tried very hard to reach consensus on all issues, and, in general, we did. The representative from the attorney general's office, the Director of Charitable Trusts, actually is working on some possibilities that would include a phase in so that we would start with the hospitals first and then have the other smaller charitable trusts be included. Health care charitable trusts are a term that is already used in our statute as far as the definition is concerned. We have already accepted that as a term that is generally understood. What we have in the bill right now, is the exemption process which is on page four, well you don't have the amendment yet, so you cannot look at it...I cannot tell you...it is a pity that we are not able to deal with the floor amendment, because it really was the committee amendment. But in any event, the exemption process says that those health care charitable trusts for whom compliance would be a financial or administrative burden, according to criteria established and administered by the director of charitable trusts, may request an exemption from the provisions of this subdivision. The exemption shall be valid for three years from the date of issuance. In other words, any charitable trusts, small VNA or whatever, home health care organization, could apply for an exemption. I am certain that it would be granted. The director of health care trusts says that it would be granted. So that is one possibility, we have the exemption process here. I don't think that you want to kill the whole thing because you think it might adversely affect a group that won't even be affected by it, because they can be exempted. But I honestly don't think that it is too hard for anyone to talk about their mission and to

say what they do for the community. If they feel that that is an obligation that they can't cope with, then they can get an exemption. I think that it is really an important bill and I don't think that we ought to be misled by some diversionary tactics.

**SENATOR KLEMM:** Senator Wheeler, I don't understand why this bill was needed. Was there testimony in your committee that said that charitable trusts are abusing their status?

**SENATOR WHEELER:** There is not testimony that they were necessarily abusing their status, but that people are having a hard time understanding what they are providing in the way of community benefits. There is not a uniform way of reporting these and there is not a uniform planning process that does involve the community, and there certainly have been concerns raised about charity care to make sure that it is not reported as bad debt, to make sure that it is available to the public, and that people know under what circumstances they are eligible for charity care, and that so they are not dunned in the process of receiving charity care, and being told that they are really supposed to be paying for it. So it clarifies a lot of things that have been confusing to the public.

**SENATOR KLEMM:** Thank you.

Senator Fraser moved to have **SB 69-L**, relative to healthcare charitable trusts and community benefits, laid on the table.

**Senator Fraser withdrew his motion.**

**Senator Russman moved to recommit.**

**Adopted.**

**SB 69 is recommitted to the Public Institutions, Health and Human Services Committee.**

**SB 84**, relative to eligibility for welfare benefits. Public Institutions, Health and Human Services Committee. Vote 7-0. Rereferred to Committee, Senator Krueger for the committee.

**SENATOR KRUEGER:** Madame President, I would like to defer if I might, to Senator Francoeur, the sponsor of the bill.

**SENATOR FRANCOEUR:** I asked the committee in light if there is a study being done on this, that we are hoping to have a report by the fall that this bill, SB 84, would be rereferred to committee so that we could work on it further. I urge the Senate's support for rereferral. Thank you.

**Adopted.**

**SB 84 is rereferred to the Public Institutions, Health and Human Services Committee.**

**SB 171-FN**, relative to homelessness in New Hampshire. Public Institutions, Health and Human Services Committee. Vote 7-0. Inexpedient to Legislate, Senator Wheeler for the committee.

**SENATOR WHEELER:** I rise in reluctant opposition to SB 171. The committee completely agrees that action must be taken to end homelessness in New Hampshire, but the committee did not feel that this vehicle would accomplish those goals. This bill would establish the ending homelessness council to solicit and review plans to eliminate homelessness by the year 2005. This bill acknowledges that many of those who are now currently homeless are persons affected by mental illness, mental health disorders,



addiction, domestic violence and sexual assault and developmental and or physical disabilities. New Hampshire does need to reformulate the way that we treat homelessness to ensure that our resources are targeted to those in greatest peril. We need to demonstrate our commitment to ending homelessness. A major portion of homelessness funding, DHHS receives is federal and carries with it, categorical restrictions, targets certain homeless populations and must be used within the federal statutes. There are however, already programs currently in place, which are designed to address the problems of homelessness. One of these is the emergency shelter and homeless coordination commission, an agency established by the legislature. DHHS cited the recent expansion and membership of this commission, the establishment of quarterly meetings and the added capacity of the commission to accept funds from public sources as proof of their efforts to end homelessness. In addition, DHHS testified that the commission is in the process of scheduling statewide community forums to determine the status of homelessness in New Hampshire. Finally, DHHS stated that their homelessness and housing unit is not staffed to perform the activities required by this legislation; therefore, I urge you to realize that we all feel that we must end homelessness in New Hampshire, but that SB 171 should be inexpedient to legislate.

SENATOR D'ALLESANDRO: I rise to speak against the recommendation of the committee. Homelessness in New Hampshire is a significant problem, particularly in the cities. The responsibility for homelessness really falls upon the state of New Hampshire when we emptied our institutions and sent these people back to the cities. One of the significant communities that is faced with this problem is the community of Concord. Certainly we are facing it in Manchester. We have undergone six years of the greatest economic growth in the history of this country. We have an unemployment rate in the state of New Hampshire of around 2.9 percent. Yet, we still have people walking around our streets with bags, pushing carts, without any hope at all of getting into the mainstream of life. I think that is appalling for a nation such as ours to let that happen. We must do something about it and we must be committed to do something about it. By not living up to a commitment, what we do is that we let this not only remain, but it grows. It grows by leaps and bounds. All you have to do is to go down on Main Street in Manchester and look at who is walking up and down those streets, sleeping on the benches, sleeping in the parks and sleeping under the bridges. I think that it is appalling. If we don't stand up and make change, we bear the responsibility for this. Thank you.

**Committee report of inexpedient to legislate is adopted.**

Senator Disnard is in opposition to the motion of inexpedient to legislate on SB 171-FN.

**SB 192**, relative to vital records. Public Institutions, Health and Human Services Committee. Vote 7-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: I rise on behalf of the committee in support of SB 192 relative to vital records. This legislation would continue the special fund, which was established to support improvement in automation of vital records at both the state and local level. This bill requires that expenditures of monies in the fund by the commissioner of Health and Human Services be with the approval of a special advisory committee. The committee will provide much needed oversight. The membership of the committee will include representatives of the New Hampshire

City and Town Clerks Associations, the primary users of the automated system. The need for oversight became very apparent during the public hearing. Testimony showed that the Department of Health and Human Services has raided the vital records improvement fund in order to support its own expenses and operating costs. It acknowledged that it has depleted the fund by creating three new positions in Concord at a cost of \$140,000 per year. As a result of this bureaucratic decision making and lack of oversight, the fund no longer is sufficient to address Y2K needs in a timely manner. A proposed amendment, which would have raised the fee to the public to cover this shortfall, was not adopted; therefore, on behalf of the Public Institutions, Health and Human Services Committee, I urge you to pass SB 192. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 208-FN**, establishing a "parents as scholars" program. Public Institutions, Health and Human Services Committee. Vote 5-1. Ought to Pass, Senator Wheeler for the committee.

**SENATOR WHEELER:** Madame President, I rise in support of SB 208. The parents as scholars program provides expanded opportunities for low income persons receiving assistance to obtain post secondary education. This is not giving money, but it is giving time to pursue the post secondary education to 500 maximum number of people who are approved by the commissioner under certain circumstances. This program focuses on enrollment in vocational and post secondary education programs up to and including the associate's degree level. It also includes a component, which allows participants to meet work requirements through internships, work-study or employment on campus or reasonably close to campus. The skills needed to succeed in today's economy require an education, and for many currently on welfare, lack of skills go hand in hand with long term joblessness. A strong economy has helped many welfare recipients find work in the past two years, but only through education and training will we see long term reductions in poverty in welfare case loads. New Hampshire's technical colleges feel that their schools are the appropriate partners to offer educational program including both academic pursuits and real life work experiences for the benefit of these recipients. Senate Bill 208-FN may help to end the cycle of poverty for some New Hampshire citizens; therefore, I urge you to pass this important legislation. Thank you.

**SENATOR KRUEGER:** I rise in very strong opposition to this bill. I had experience in my life to have taught at the vocational technical college up in Claremont for one year in the nursing program. One of the young women that came and spoke and gave testimony wanting this program happened to be in that program, so I felt pretty comfortable in evaluating her commitment, which I felt was excellent, but I had a little more problem looking at her commitment to time and work. What this basically does in my mind, as opposed to work first, which we have found to be very successful in reducing the number of people on welfare and encouraging them to get a job. This says for example, and I will use this young woman. This says to this woman who may be taking at the time, six to nine credits of technical college course work and maybe a day in what we would call the field, maybe in a hospital studying to be a nurse, maybe an associate's degree program. This says that you can use that time towards your work-first program to collect benefits. Now, when I

questioned this person and when I questioned other people in the room, I found out that many of these students, and I remember this from being up there, were already receiving tuition assistance, if not free tuition, help with their books, help with transportation, and it used to be full, but now I think that it is part help with daycare. I looked at this from a middle class parent perspective, and I think about my own children and I think about all of the parents who have taken out second mortgages, kids like my own kids, who have two and three and in the last child's case, four jobs to get through college. I heard this woman say "well, I could go to class, and then I could do my practicum on Friday, and I need the weekend for quality time with her three-year old" because her male companion had left her, not her husband, after so many years because she had this child, and she needed quality time. Well, I would have like quality time with my children when I went for my masters, but I was still vice principal of a school and I still worked. The same with my own kids. I feel that we already are encouraging these wonderful people, and I would agree with Senator Wheeler to the tenth degree, that I am committed to the vocational program, and I am committed to people getting off of welfare and getting better jobs than what was referred to during the hearings as McDonald's kind of jobs. But I have grave concerns that the taxpayers are going to be not just paying for their own children, getting them through school, and that those kids have to go out and get jobs, but now we are going to be paying for other people who are not willing to say 'gee, I need to give up a little bit of time for a short amount of educational experience in order to go out and work.' I think that this is a very, very big commitment that we are asking the state, the taxpayers of this state to support. I would like everyone in this room to consider, does this really help that welfare mom? Does this really help? Because later in life she is going to have to jiggle the home and work and maybe she will want to go on for her bachelor's degree. So I have a very, very hard time, however, I duly applaud the supporters of this legislation, in trying to encourage people, but handouts, I am having a very, very hard time with. Thank you very much.

SENATOR TROMBLY: Senator Krueger, would you believe that it is very difficult for people who don't own a home to take out a second mortgage for either theirs or their children's education?

SENATOR KRUEGER: I absolutely agree with you. That was only raised to generate support for all of the people who are sending their kids to school. What I meant by that statement was that everybody finds a means if nobody hands you the money. I would think that there would be a lot of parents who would, if given the money, would like to not mortgage their home, or have mom go and get a first job and in many cases, dad or mom go and get a second job to get their kids through school. All that I am saying is, that if there is a will, there is a way. I had a very hard time understanding why someone couldn't find a part time evening work. By the way, when I taught up at that program in Claremont, I would say that a good 90 percent of the students up there were working as aides in the local nursing homes while raising children and by going in that program. I remember the fact as being extremely supportive of those people. Some of those people also would have qualified under some of these programs. I just feel in substituting the work first, we are not exactly encouraging the tough stuff that is going to be out there later in life. I appreciate what you said.

SENATOR TROMBLY: Thank you, Senator.



SENATOR F. KING: Senator Wheeler, on lines 15 and 16 on page two, it is unclear to me if 25 hours a week, that speaks is the total commitment that the individual would have to commit to this program, or does that include 25 hours of work, plus the education time?

SENATOR WHEELER: That includes the education.

SENATOR F. KING: I support this program. I think that these types of programs need to be in place, but I do think that a component of the program should be some commitment to work during the period of time that the education takes place. In my previous life, one of the things that I was responsible for was the operation of two nursing homes. The county, because it was constantly in need of certified nurse's aides, used to run its own training program. We often had individuals that would qualify for this type of a program and come to you and take those courses. Later on when they were hired, the county also had a program where it also paid tuition. I saw many of these people who were working a full schedule, often nights and weekends, would take advantage of the tuition program, and some would go on and get their LPN and some went on and got their RN's. So these programs do help, but I think to require a minimum of 25 hours a week...to dedicate the entire program is simply not enough. I think that there should be more dedication for the individual because the individuals that I am speaking about, most of them were single parents with very limited personal resources, but they still found time to work, take the education and better themselves. I think that we ought to have a component of a vocational training program that includes the academic courses and part of that should be a contribution of work.

SENATOR SQUIRES: Madame President, I rise in support of this bill. The Welfare Reform Act for the first time put a limit on the duration of time for which a person can receive welfare benefits. Five years, four years depending on the state. The current economic climate has certainly reduced the welfare roles, but it has also generated a large number of entry-level jobs at or slightly above the minimum wage. What we haven't experienced is the impact of an economic downturn and what is going to happen when people who have used up their welfare benefits lose their job. That will happen. The best way to forestall that eventuality is to give people education so that they can function at some job that is not dependent on an entry level boom economy, but is more stable. So I hope that we don't have to visit the issue of when benefits run out. I would have no difficulties supporting Senator King's belief that there should be some work in here, but to obtain associate's degree is an enormous advantage over the possession of a high school degree. Thank you.

SENATOR HOLLINGWORTH: Senator Wheeler, I am checking the fiscal note and it appears that it says that there is no additional cost to the state. Is that correct?

SENATOR WHEELER: Yes, that is true. It is cost neutral. Indeed there is \$9 million set aside specifically for New Hampshire, which could be spent on this program, so it won't cost the state a penny.

SENATOR FERNALD: Senator Wheeler, I am not sure if you know the answer to this question, but if you...the requirement here is 25 hours for study or work, if someone is simply working, do you know how many hours the current statute requires someone to be available to work?

SENATOR WHEELER: I think that it is either 20 or 25 hours for work not related to study right now. I could be wrong. The problem...the reason that we have this legislation before us is that the work-first philoso-

phy of the Department of Health and Human Services in New Hampshire has been in the past, that the recipient in order to receive benefits, has to find a job or be actively engaged full time in a job search so that it leaves very little time for any kind of study.

SENATOR FERNALD: Senator Fred King, if the current work requirements require someone to be available for work 25 hours a week, you had said that you thought that wasn't enough of a commitment if they are going to school. Apparently it is enough under our current law if they are working, what do you think is the right number for line 16 if someone wants to pursue study rather than to pursue work while they are receiving welfare benefits?

SENATOR F. KING: Perhaps I can't answer your question. What I am suggesting is that I support the program and I am going to vote for the bill. What I am suggesting is that part of the program as you are training for a vocational job, presumably someone is running a course...and I think that what I would prescribe as part of that would be a concurrent job commitment of some type to go along with the academic courses, because I think that the two go hand in hand. I will tell you that they are successful through my life experiences. So I am not suggesting that the bill be changed, I am just making a comment, for the record, that it would be my opinion that those two should go hand in hand somehow. That would be up to the managers of the program to do that, that is all that I am saying.

SENATOR WHEELER: Senator King, would you believe that I think that we tried to address those concerns in this version of the bill as opposed to what we had last year, because this is specifically involving the community technical colleges in the plan? If you look on page two on line 19 it...would you believe that I think that this is addressing your concerns, "any initial post secondary educational plan shall emphasize vocational skills training in a specific occupational area." So that there is a desire to have work integrated into the program.

SENATOR F. KING: I believe that.

SENATOR KRUEGER: Senator Fernald, would you believe that if a person in these programs, in fact, worked 25 hours a week and if they were in fact committed to a full time program as 12, as we all know it to be, 12 hours, they still have only made a commitment of 37 hours a week? The second question that I would ask you is, would you believe, that part of the testimony during this particular hearing where administration from the vocational technical colleges, who may have had the best of interest considering the fact that their federal dollars are drying up and, in fact, that this is still taxpayer's dollars. It may not be new dollars, but it is still dollars that the taxpayers are spending?

SENATOR FERNALD: I would believe in response that someone who has a 12 credit course load is spending much more than 12 hours a week on their studying.

SENATOR KRUEGER: Thank you.

SENATOR GORDON: This is a bill that I have found very difficult to make up mind on, but I am going to, I guess, on balance, to support the bill. I frequently have the opportunity to test market these bills in my law office. I go to the staff and basically ask them what they think? **TAPE CHANGE** and they are working full-time as secretaries, or they are working as bookkeepers, but they are working in our office full-

time. Most of them are managing families, managing childcare, managing all of their family issues, and then they are going to get their paralegal degree, because they have a motivation to succeed. I think that the feedback that they gave me, was when I talked about this, is the availability of this type of program is fine if you provide people with money, you provide people with time, but the question is, can you provide people with the motivation to succeed? They weren't very fond of the idea of necessarily going to school at night at the tech school, finding themselves working all day, balancing their family requirements, and then finding somebody basically who was excused from that responsibility. On the other hand, I guess that what I have to look at in terms of this bill is whether I have some confidence in the department that they are going to do some reasonable level of screening to make sure that the candidates for this particular program are those types of people who will make use, or will receive benefits from the program, and that we will be on a track and that do have some motivations to succeed. So having said all of that, and, basically explaining the dilemma that I am in, in terms of voting for it, I think that I am going to vote on it affirmatively with the idea of moving it forward with the hope in fact that the department does do the right thing, and picks the right candidates to make this program work.

**Question is on the motion of ought to pass.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Pignatelli.**

**The following Senators voted Yes: F. King, Gordon, Fraser, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Squires, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler, Hollingworth, Cohen.**

**The following Senators voted No: Johnson, Roberge, Francoeur, Krueger, Brown, Klemm.**

**Yeas: 18 - Nays: 6**

**Adopted.**

**Ordered to third reading.**

**HB 92**, exempting permanently disabled veterans from the requirement of reestablishing their disability status for the division of motor vehicles every 4 years to prove eligibility for special license plates. Transportation Committee. Vote 5-0. Ought to Pass, Senator Roberge for the committee.

**SENATOR ROBERGE:** Madame President and members of the Senate, HB 92 exempts permanently disabled veterans from having to submit proof on continuing disability to the Division of Motor Vehicles every six years to remain eligible for special license plates. The federal requirements in order to prove that a veteran is permanently disabled are quite stringent and already in place. It is redundant for New Hampshire veterans to have to reestablish with the state Department of Motor Vehicles every six years that they are still permanently disabled. The Senate Transportation Committee unanimously recommends HB 92 as ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 244**, relative to the corporate charter of the Laconia Airport Authority. Transportation Committee. Vote 5-0. Ought to Pass, Senator McCarley for the committee.



SENATOR MCCARLEY: House Bill 244 reestablishes the Laconia Airport Authority, which was originally incorporated in 1941. The bill as amended by the House has the full support of the city officials both from Laconia and Gilford, the Airport Authority members, the selectmen of Belknap County and the New Hampshire Division of Aeronautics. The bill does not change the powers or the authority of the airport authority. The Transportation Committee unanimously recommends ought to pass.

**Adopted.**

**Ordered to third reading.**

**Recess.**

**Out of Recess.**

### **HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in its amendment to the following entitled House Bill sent down from the Senate:

**HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products.

### **RECONSIDERATION**

Senator Cohen having voted on the prevailing side now moved reconsideration on **HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products, whereby we ordered it to third reading.

**Question is on the motion of reconsideration.**

**A roll call was requested by Senator F. King.**

**Seconded by Senator Francoeur.**

**The following Senators voted Yes: Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Pignatelli, Larsen, J. King, D'Allesandro, Wheeler, Hollingworth, Cohen.**

**The following Senators voted No: F. King, Gordon, Johnson, Fraser, Roberge, Squires, Francoeur, Krueger, Brown, Russman, Klemm.**

**Yeas: 13 - Nays: 11**

**Adopted.**

Senator Cohen moved that **HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products, be on second reading at the present time.

**Adopted.**

### **First and Second Reading.**

**HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products.

Senator Cohen moved to have **HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products, laid on the table.

**Adopted.**

### **LAID ON THE TABLE**

**HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products.

**Recess.**

**Senator Cohen in the Chair.**

Senator Trombly moved to have **HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products, taken off the table.

**Adopted.**

**HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products.

Senator Larsen offered a floor amendment.

Sen. Larsen, Dist. 15

Sen. McCarley, Dist. 6

**1999-0919s**

**09/01**

**Amendment to HB 112-FN-A**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to state taxes and other sources of revenue for funding an adequate education; relative to establishing the cost of an adequate education, and relative to creating a commission to study the methodology used in establishing the cost of an adequate education and a tax equity and efficiency commission, and making appropriations therefor.

Amend the bill by replacing all after the enacting clause with the following:

**1 Purpose; Intent.**

I. In December 1997, the New Hampshire supreme court in the Claremont II decision ruled that it is the state's duty to define and provide all New Hampshire's public school students with an adequate education, and further that the manner of raising revenue to pay for an adequate education be through a system of taxation that is proportional in substance and just and reasonable in application.

II. Through the passage of House Bill 1075, the general court defined an adequate education. The definition grew out of work undertaken in the early 1990's to develop curriculum frameworks which specifically address the importance of establishing and measuring what all New Hampshire students should know and be able to do. The curriculum frameworks were developed with the widespread participation of educators, business people, government officials, community representatives, and parents. They have evolved into a critical component of providing a quality public education to New Hampshire students.

III. The New Hampshire educational improvement and assessment program ("NHEIAP") tests were developed in conjunction with the curriculum frameworks as a measure of student performance. The general court therefore finds that the NHEIAP tests are a measure of student performance and can be used to develop and implement effective methods for assessing learning and its application. The general court further finds that in determining the cost of a constitutionally adequate education, performance based outcome criteria, specifically the NHEIAP test scores, can be used to identify school districts that are delivering such a constitutionally adequate education. The NHEIAP tests are comprehensive and difficult. Students taking these tests in the third, sixth, and tenth grades are scored on 4 levels of performance: novice, basic, proficient, and advanced. The general court finds that students who score in the basic, proficient, and advanced levels on these state tests are making progress toward achieving the goals set forth in House Bill 1075.

IV. The general court recognizes the inherent imprecision, subjectivity, and difficulty in determining the cost of an adequate education. Numerous complex financial, budgetary, administrative, and educational elements must be in place in order for the state to fully meet the mandates of Claremont II. Those mandates coupled with the policy of the state recognize that an adequate public education is not a static concept removed from the demands of an evolving world. An adequate education transcends mere competence in the reading, writing and arithmetic. Such an education shall provide all students with a meaningful opportunity to acquire the knowledge and skills necessary to prepare them for successful participation in the social, economic, scientific, technological, and civic realities of society, now and in the years to come. To ensure these fundamental rights, as recognized by the court, thoughtful and deliberate planning with the involvement of many sources of expertise as well as phased-in implementation of the major elements over time is required. Concomitantly, such planning and implementation is required in order to ensure:

(a) That the educational needs of all children are met, including regular education students, students with special needs such as students with disabilities, students who are economically disadvantaged or are otherwise educationally at risk, or those who are intellectually gifted;

(b) That the needed changes are long-term in nature, truly embedded on the local and state level, gain acceptance and are both cost and educationally effective, and to those ends address underlying or systemic issues; and

(c) That compliance with all applicable federal laws occurs.

V. Under Claremont II, and as recently reaffirmed by the court in its November 1998 opinion, a funding system for a constitutionally adequate education must be put in place. This bill provides for a constitutionally adequate education that is reasonably and proportionally funded through a combination of revenue sources.

VI. However, in order to meet the aforementioned competing requirements of a long-range, carefully planned, and phased-in solution and to address the need to have an acceptable system in place, this act establishes a special commission to develop long-term plans and solutions to comprehensively and permanently meet constitutional mandates.

2 Cigarette Tax. Amend RSA 78:7 to read as follows:

78:7 Tax Imposed. A tax upon the retail consumer is hereby imposed at the rate of [37] 49 cents for each package containing 20 cigarettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes, on all tobacco products sold at retail in this state. The payment of the tax shall be evidenced by affixing stamps to the smallest packages containing the tobacco products in which such products usually are sold at retail. The word "package" as used in this section shall not include individual cigarettes. No tax is imposed on any transactions, the taxation of which by this state is prohibited by the Constitution of the United States.

3 Applicability. Section 2 of this act shall apply to all persons licensed under RSA 78:2. Such persons shall inventory all taxable tobacco products in their possession and file a report of such inventory with the department of revenue administration on a form prescribed by the commissioner within 20 days after the effective date of this act. The tax rate effective on the effective date of section 2 of this act, shall apply to such inventory and the difference, if any, in the amount paid previously on



such inventory and the current effective rate of tax shall be paid with the inventory form. The inventory form shall be treated as a tax return for the purpose of computing penalties under RSA 21-J.

4 Gender Reference Change. Amend the introductory paragraph of RSA 21-J:3 to read as follows:

In addition to the powers, duties, and functions otherwise vested by law, including RSA 21-G, in the commissioner of the department of revenue administration, [he] **the commissioner** shall:

5 Duties of Commissioner. Amend RSA 21-J:3, XIII to read as follows:

XIII. Equalize annually **by March 31** the valuation of the property in the several towns, cities, and unincorporated places in the state, **including the value of property exempt pursuant to RSA 72:37, 72:37-b, 72:39-a, 72:62, 72:66, and 72:70**, by adding to or deducting from the aggregate valuation of the property in towns, cities, and unincorporated places such sums as will bring such valuations to the true and market value of the property, including the equalized value of property formerly taxed pursuant to the provisions of RSA 72:7; 72:15, I, V, VII, VIII, IX, X, and XI; 72:16; 72:17; 73:26; 73:27; and 73:11 through 16 inclusive, which were relieved from taxation by the laws of 1970, 5:3; 5:8; 57:12; and 57:15, the equalized valuation of which is to be determined by the amount of revenue returned in such year in accordance with RSA 31-A, and by making such adjustments in the value of other property from which the towns, cities, and unincorporated places receive taxes **or payments in lieu of taxes** as may be equitable and just, so that any public taxes that may be apportioned among them shall be equal and just. **In carrying out the duty to equalize the valuation of property, the commissioner shall follow the procedures set forth in RSA 21-J:9-a.**

6 Duties of the Commissioner. Amend RSA 21-J:3, XV to read as follows:

XV. Establish and approve tax rates as required by law **including the uniform education tax rate.**

7 New Paragraph; Duties of Commissioner. Amend RSA 21-J:3 by inserting after paragraph XXIV the following new paragraph:

XXV. Petition the board of tax and land appeals to issue an order for reassessment of property pursuant to the board's powers under RSA 71-B:16-19 whenever the valuation of property for equalization purposes in a particular city, town, or unincorporated place is disproportional to the valuation for equalization purposes in other cities, towns, or unincorporated places in the state.

8 Division of Property Appraisal; Department of Revenue Administration. RSA 21-J:9 is repealed and reenacted to read as follows:

21-J:9 Division of Property Appraisal. There is established within the department the division of property appraisal, under the supervision of a classified director of property appraisal who shall be responsible for the following functions, in accordance with applicable laws:

I. Assisting and supervising municipalities and appraisers in appraisals and valuations as provided in RSA 21-J:10 and RSA 21-J:11.

II. Appraising state-owned forest and recreation land under RSA 227-H and RSA 216-A.

III. Annually determining the total equalized valuation of properties in the cities and towns and unincorporated places according to the requirements of RSA 21-J:9-a.

IV. Preparing a standard appraisal manual which may be used by assessing officials, and holding meetings throughout the state with such officials to instruct them in appraising property.

9 New Section; Equalization Procedure. Amend RSA 21-J by inserting after section 9 the following new section:

21-J:9-a Equalization Procedure. The following procedures shall apply in determining the equalization of property within the cities, towns, and unincorporated places as required by RSA 21-J:3, XIII:

I. The commissioner shall annually conduct a sales-assessment ratio study which shall include arm's length sales or transfers of property that occurred 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made.

II. In determining the arm's length sales or transfers that are included in the sales-assessment ratio study, the commissioner may use a randomly selected sample of such sales and transfers the size of which shall be determined by the total taxable parcels in the city, town, or unincorporated place.

III. If less than 2 percent of the total taxable parcels in a city, town, or unincorporated place has been transferred by an arm's length sale or transfer during the 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made or the commissioner determines the sales are not representative of the property within the municipality, the commissioner may choose one or more of the following options in the order listed:

(a) Include appraisals of any of the taxable property of such city, town, or unincorporated place in the sales-assessment ratio study. Such appraisals shall be based on full and true market value pursuant to RSA 75:1 and shall be performed by department appraisers. The property to be appraised shall be selected by the commissioner.

(b) Include arm's length sales or transfers in the city, town, or unincorporated place, within 2-1/2 years preceding April 1 of the year preceding the tax year for which such equalization is made.

(c) Consider recent equalization ratio activity in adjoining cities, towns, or unincorporated places.

IV. The commissioner may use the inventory of property transfers authorized by RSA 74:18 in determining the equalized value of property and may consider such other evidence as may be available to the commissioner on or before the time the final equalized value is determined.

10 Appraisals of Property for Ad Valorem Tax Purposes. RSA 21-J:11 is repealed and reenacted to read as follows:

21-J:11 Appraisals of Property For Ad Valorem Tax Purposes.

I. Every person, firm, or corporation intending to engage in the business of making appraisals on behalf of a municipality for tax assessment purposes in this state shall notify the commissioner of that intent in writing. No person, firm, or corporation engaged in the business of making appraisals of taxable property for municipalities and taxing districts shall enter into any contract or agreement with any town, city, or other governmental division without first submitting the proposed contract or agreement to the commissioner for examination and approval and submitting to the commissioner evidence of financial responsibility and professional capability of personnel to be employed under the contract.

II. The commissioner, at no expense to the municipality, shall monitor appraisals of property and supervise appraisers as follows:

(a) Assure that appraisals comply with all applicable statutes and rules;

(b) Assure that appraisers are complying with the terms of any appraisal contract;

(c) Review the accuracy of appraisals by inspection, evaluation, and testing, in whole or in part, of data collected by the appraisers; and

(d) Report to the governing body on the progress and quality of the municipality's appraisal process.

III. The commissioner shall adopt rules under RSA 541-A relative to the provisions required of all contracts for appraisal services and the methodology for inspection, evaluation, and testing of data for the purposes of appraisal monitoring.

11 Reports Required. Amend the introductory paragraph of RSA 21-J:34 to read as follows:

The governing body of each city, town, unincorporated [~~town, unorganized~~] place, school district, and village district, and the clerk of each county convention shall submit to the commissioner of revenue administration the following reports necessary to compute and establish the **uniform education property tax rate and the** tax rate for each city, town, unincorporated [~~town, unorganized~~] place, school district, village district, and county. The commissioner shall adopt rules under RSA 541-A establishing the form and content of these reports:

12 New Paragraph; Reports Required. Amend RSA 21-J:34 by inserting after paragraph XIV the following new paragraph:

XV. A report filed by the assessing officials of each city, town, and unincorporated place shall certify sales-assessment information necessary for the department to conduct the annual sales-assessment ratio study required by RSA 21-J:9-a. This report shall be filed by November 30 or 30 days after receipt from the department. Municipalities which fail to timely file the report shall pay a penalty to the state in the amount of \$100 for each day the report is not timely filed.

13 New Paragraph; Setting of Tax Rates by Commissioner. Amend RSA 21-J:35 by inserting after paragraph I the following new paragraph:

I-a. The commissioner shall set the uniform education property tax rate at \$10.00 on each \$1,000 of total equalized value as determined under RSA 21-J:3, XIII, of all property in the municipality subject to taxation under RSA 76:3.

14 Revenue Sharing. Amend RSA 31-A:4, I to read as follows:

I. Its 1978 distribution under RSA 31-A plus its share under the equalized formula of an annual increase of 5 percent in the previous year's aggregate distribution, through the year 1981, excluding revenues derived from RSA 77-A:20. ***The amount of money which is removed from the formula for deposit in the education trust fund shall not affect the remaining municipal revenue sharing distribution. The same amount distributed to each municipality in fiscal year 1998, excluding the amount apportioned to the school district in the 1998 property tax calculations, shall be distributed to each municipality in fiscal year 1999 and each year thereafter until the legislature revises the formula or provides additional appropriations that will affect the distribution amount.***

15 Board of Tax and Land Appeals; Authority. Amend RSA 71-B:5, II to read as follows:

II.(a) To hear and determine [~~any~~] appeals ***by municipalities*** relating to the [~~equalization of valuation performed~~] ***equalized valuation of property determined*** by the commissioner of revenue administration pursuant to RSA 21-J:3, XIII. Any [~~town~~] ***municipality*** aggrieved by [~~an~~] ***its*** equalized valuation as determined by the commissioner of revenue administration must appeal to the board in writing within 30 days of [~~the town's notification~~] ***notice*** of [~~the~~] ***its final*** equalized valuation by the commissioner. ***The board shall hear and make a final***



***ruling on such appeal within 45 days of its receipt by the board. The board's decision on such appeal shall be final pending a decision by the supreme court of any appeal by any municipality of a board's decision. The supreme court shall give any appeal under this section priority in the court calendar.***

(b) Decisions by the supreme court on appeals made under subparagraph (a) that are issued prior to September 1 shall be used by the commissioner of revenue administration in determining the taxes to be raised by each municipality in the tax year commencing April 1 of the succeeding year.

(c) Decisions by the supreme court on appeals made under subparagraph (a) that are issued after September 1 shall be used by the commissioner of revenue administration in determining the taxes to be raised in the tax year commencing April 1 of the second succeeding year. Any adjustments that need to be made to a municipality's tax rate based on a decision by the supreme court under this subparagraph shall be made by the commissioner of revenue administration in the tax year commencing April 1 of the second succeeding year.

16 New Paragraph; Order for Reassessment. Amend RSA 71-B:16, IV to read as follows:

IV. When a complaint is filed with the board alleging that all of the taxable real estate or taxable property in a taxing district should be reassessed or newly assessed for any reason, provided that such complaint must be signed by at least 50 property taxpayers or 1/3 of the property taxpayers in the taxing district, whichever is less[-]; or

***V. When the commissioner of revenue administration files a petition with it pursuant to RSA 21-J:3, XXV.***

17 New Section; Inventory of Property Transfers. Amend RSA 74 by inserting after section 17 the following new section:

74:18 Inventory of Property Transfers.

I. In order to properly equalize the value of property under RSA 21-J:3, XIII, an inventory of property transfers shall be filed with the department of revenue administration and with the municipality where the property is located for each transfer of real estate or interest in real estate. Each form may include the following information:

(a) The buyer and seller's names and post transaction addresses and the name and address of a contact person if the buyer or seller is a trust or corporation.

(b) A description of the exact location of the property by town, street, and the assessor's map, lot, and block number.

(c) The acreage included in the sale.

(d) An accurate description of the property included in the sale, the neighborhood where the property is located, and the type and style of the property sold.

(e) The buyer's ownership interest in the property.

(f) The sale price, date of transfer, and the amount mortgaged.

(g) The description of the type of transfer that has taken place.

(h) The amount of personal property included in the sale price.

(i) Whether the property was previously occupied and whether the property will serve as the buyer's primary residence.

(j) The financing arrangements made to purchase the property to be answered at the option of the buyer.

(k) Whether any concessions were made in the sale.

(l) Whether the property was in current use.

(m) Whether land use taxes were considered in the sale.

(n) The buyer's dated signature certifying that the information indicated on the form is true.

II. The inventory of property transfers required by this section shall be filed with the department of revenue administration and with the municipality where the property is located by the purchaser, grantee, assignee, or transferee, no later than 30 days from the recording of the deed at the register of deeds or transfer of real estate, whichever is later. Persons required to file the inventory of property transfers who willfully fail to file or willfully make false statements on the forms shall be guilty of a violation.

III. No deed, recording a transfer of real estate or any interest in real estate, executed before October 1, 1995, shall be required to comply with this section.

IV. Failure to comply with this section shall not be construed to cloud title.

V. Any information provided to the department or the municipality pursuant to this section shall be exempt from the right-to-know law, RSA 91-A.

18 Education Property Tax. RSA 76:3 is repealed and reenacted to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate calculated by the commissioner of revenue administration pursuant to the authority granted in RSA 21-J:35, I-a is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except such property exempted under RSA 76:3-a or subject to tax under RSA 82.

19 New Sections; Homestead Exemption. Amend RSA 76 by inserting after section 3 the following new sections:

76:3-a Homestead Exemption. The homestead property of qualifying taxpayers is entitled to an exemption of 50 percent of the value of such property.

76:3-b Definitions. For purposes of determining and claiming the homestead exemption in RSA 76:3-a:

I. "Assessing official" means the assessing authority of any town, city, or unincorporated place.

II. "Commissioner" means the commissioner of the department of revenue administration.

III. "Department" means the department of revenue administration.

IV. "Dwelling" means the house or habitation for a natural person or persons consisting of a structure that provides shelter from the elements and contains at minimum a space for preparation and consumption of food and for repose on a daily basis.

V. "Municipality" means a city, town, or unincorporated place.

VI. "Homestead property" means the dwelling owned by a claimant or in the case of a multi-unit dwelling, the portion of the dwelling which is used as the claimant's principal place of residence. "Homestead property" shall not include land and buildings taxed under RSA 79-A or land and buildings or the portion of land and buildings rented or used for commercial or industrial purposes. In this paragraph, a dwelling is "owned" by a claimant if the claimant is in possession of the dwelling as a vendee under a land contract. A dwelling may be "owned" by more than one person if they hold the property as joint tenants or tenants in common, in which case their homestead exemption shall be apportioned among them on their claim forms.

VII. "Qualifying taxpayer" means a person who on April 1 owns homestead property subject to the tax imposed under RSA 76:3, and who by

June 30, 1999, or in subsequent years by May 1 of the tax year for which the claim is made, submits a claim to the selectmen or assessing officials on a form prescribed by the commissioner and signed by the claimant under the pains and penalties of perjury. Claims filed after June 30, 1999, or May 1 of subsequent years shall not be considered timely for the current tax year, but shall be considered filed for the following tax year..

76:3-c Acceptance or Denial of Claims; Grounds for Denial; Procedure; Claims Continuous.

I. Upon receipt of a claim for a homestead exemption, the selectmen or assessing officials shall review the claim and accept or deny the claim by August 1 of the year for which the claim is timely.

II. The only grounds for the selectmen or assessing officials to deny a claim are:

(a) If the claim form is incomplete or incorrectly filled out; or

(b) If a majority of the selectmen or assessing officials have personal knowledge that the property on which the claim is made is not homestead property owned by the claimant.

III. If they deny a claim, the selectmen or assessing officials shall send written notice to the claimant on a form prescribed by the commissioner and provided to each municipality. Failure of the selectmen or assessing officials to respond by August 1 shall constitute acceptance of the claim. The selectmen or assessing officials will be deemed to have responded by August 1 if, on or before that date, the claimant has received the written notice from the selectmen or assessing officials, or if the selectmen or assessing officials have sent, on or before August 1, the written notice to the claimant by first-class mail, postage prepaid, at the mailing address provided by the claimant on the claim form. If August 1 is a Saturday, Sunday, or legal holiday, then the selectmen's or assessing official's denials must be delivered or mailed on or before the day that is not a Saturday, Sunday, or legal holiday.

IV. All claims accepted by the selectmen or assessing officials shall be sent to the department by August 20. The commissioner may prescribe a form for the municipalities to use for this purpose.

V. Accepted claims shall continue from year to year without necessity for refiling unless there is a change in ownership or use of the property. A change in ownership requires the filing of a new claim, but the homestead treatment continues as long as the new owner uses the property as homestead property.

76:3-d Mixed Use; Property Owned by Multiple Claimants; Manufactured Housing.

I. The following shall apply to the determination of the amount of property value exempted relative to a homestead which is part of a single tax parcel upon which is located other dwelling units not owned or occupied by the taxpayer or other significant non-homestead property:

(a) If the tax parcel includes property used for business or other nonresidential use, the exempt homestead amount shall include in addition to the actual homestead the lesser of 1,000 square feet of floor area of such non-homestead property or \$25,000 of equalized assessed valuation, except that family owned and operated farms which are not owned by a business entity or held in the name of a non-natural person shall be eligible for the full homestead exemption on all property not assessed under RSA 79-A.

(b) If the tax parcel includes other dwellings or dwelling units, the value of the homestead exemption relative to the claimed homestead shall be determined by the assessing official as follows:



(1) Divide the value of the tax parcel by the number of dwelling units; or

(2) If the square footage of each dwelling unit is known, multiply the value of the tax parcel by a fraction consisting of the square footage of the claimed homestead divided by the total square footage of all dwelling units in the parcel; or

(c) In lieu of the methods of determining the amount of homestead exemption in subparagraph (a) or (b), a taxpayer may present competent evidence of a greater proportion of exempt value to the assessing officials. In such instance the taxpayer bears the burden of proving the claimed exemption by the preponderance of the evidence.

II. If homestead property is owned by more than one claimant, the claimants shall apportion their claims so that the total of their claims does not exceed the exemption that could be claimed under RSA 76:3-a if the property were owned by one claimant.

III. Manufactured housing as defined in RSA 674:31, qualifying as homestead property and sited on land not owned by the claimant, shall be eligible for the homestead exemption based on the value of such manufactured housing without the land.

76:3-e Partial Year Homestead Exemption. If a taxpayer purchases a homestead after April 1 for which no homestead exemption was claimed by the previous owner, the taxpayer may apply to the department for a refund of statewide education property tax previously paid on the homestead, but for which no application was made. The amount of such refund shall be apportioned according to the number of days in the tax year the taxpayer owned and occupied the homestead. Claims by taxpayers purchasing homestead property shall be filed with the inventory of property transfer required to be filed with the municipality pursuant to RSA 74:18. The selectmen or assessing officials shall, within 30 days of filing of the referral claim, accept or deny it and, if accepted, notify the department. The department shall certify the amount of such refund to the state treasurer for payment from the education trust fund created by RSA 198:39.

76:3-f Forms. Forms necessary for the implementation of the homestead exemption in RSA 76:3-a shall be prescribed by the commissioner and provided to each municipality. The provisions of RSA 541-A shall not apply to the development of such forms.

76:3-g False Homestead Claims. Any person who files a false homestead claim may, in addition to paying the full tax owed plus charges and interest, be subject to a penalty of 2 times the difference between the tax paid on the property and the tax owed.

20 What Taxes Assessed. Amend RSA 76:5 to read as follows:

76:5 What Taxes Assessed. The selectmen shall seasonably assess all state and county taxes for which they have the warrants of the [state] **commissioner of revenue administration** and county treasurers respectively; all taxes duly voted in their towns; and all school[, ~~school-house,~~] and village district taxes authorized by law or by vote of any school or village district duly certified to them; and all sums required to be assessed by RSA 33.

21 Commissioner's Warrant. RSA 76:8 is repealed and reenacted to read as follows:

76:8 Commissioner's Warrant.

I. The commissioner of revenue administration shall annually calculate the proportion of the education property tax to be raised by each municipality by multiplying the uniform education property tax rate by the total equalized value of all property in the municipality as determined under RSA 21-J:3, XIII.

II. The commissioner shall issue a warrant under the commissioner's hand and official seal for the amount computed in paragraph I to the selectmen or assessors of each municipality at the time of the setting of the tax rate directing them to assess such sum and pay it to the municipality for the use of the school district or districts and, if there is an excess education tax payment due under RSA 198:47, I, directing them to assess the amount of that excess education tax payment and pay it to the department of revenue administration for deposit in the education trust fund. The commissioner shall also issue a warrant under the commissioner's hand and official seal for such sums and at such times as may be prescribed for other taxes assessed by such selectmen or assessors of the municipality.

III. Municipalities are authorized to assess local property taxes necessary to fund school district appropriations not funded by the education property tax, by distributions from the education trust fund under RSA 198:39, or by other revenue sources.

22 Commissioner's Report. RSA 76:9 is repealed and reenacted to read as follows:

76:9 Commissioner's Report. The commissioner of revenue administration shall report to the governor, the speaker of the house of representatives, the president of the senate, and the commissioner of education each year on or before October 1, a statement of the education property tax warrants to be issued for the tax year commencing April 1 of the succeeding year.

23 Information Required. Amend RSA 76:11-a, I to read as follows:

I. The tax bill which is sent to every person taxed, as provided in RSA 76:11, shall show the rate for municipal, ~~[school]~~ **local education, state education,** and county taxes separately, the assessed valuation of all lands and buildings for which said person is being taxed, and the right to apply in writing to the selectmen or assessors for an abatement of the tax assessed as provided under RSA 76:16. The department of revenue administration shall compute for each town and city the rates which are to appear on the tax bills and shall furnish the required information to the appropriate town or city.

24 Extent. Amend RSA 85:1 to read as follows:

85:1 Who May Issue. The state treasurer **or the commissioner of revenue administration,** and each county and town treasurer, may issue extents under their hands and seals respectively, in cases authorized by law, and such extents shall be deemed to be executions against the person and property.

25 New Subdivisions; State Aid for Educational Adequacy; Education Trust Fund; Excess Education Property Tax Payment; Commission. Amend RSA 198 by inserting after section 37 the following new subdivisions:

State Aid for Educational Adequacy; Education Trust Fund

198:38 Definitions. In this subdivision:

I. "Municipality" means a city, town, or unincorporated place.

II. "School district" means school district as defined in RSA 194:1 or RSA 195:1.

III. "Elementary school" means a school with any of the grades kindergarten through 8.

IV. "High school" means a school with any of the grades 9 through 12.

V. "Average base per pupil cost of an elementary school pupil" means the amount as determined in accordance with RSA 198:40.

VI. "Weighted pupils" means resident pupils weighted as follows:

(a) Every pupil, including kindergarten pupils, 1.0.

(b) A high school pupil, an additional weight of 0.2.

(c) An educationally disabled child, an additional weight of 1.0.

(d) An elementary pupil who is eligible to receive a free or reduced-price meal shall receive an additional weight as follows:

(1) If the pupil is in a district in which less than 12 percent of the elementary pupils are eligible to receive a free or reduced-price meal, and additional weight of zero.

(2) If the pupil is in a district where at least 12 percent but less than 24 percent of the elementary pupils are eligible to receive a free or reduced-price meal, an additional weight of 0.5.

(3) If the pupil is in a district in which at least 24 percent of the elementary pupils are eligible to receive a free or reduced-price meal, an additional weight of 1.0.

VII. "Educationally disabled child" means an educationally disabled child as defined in RSA 186-C:2, I.

VIII. "Consumer price index" means the consumer price index for all items for urban consumers for the Northeast published by the United States Department of Labor.

IX. "Average daily membership in attendance" means average daily membership in attendance as defined in RSA 189:1-d, III.

X. "Average daily membership in residence" and "resident pupils" mean the average daily membership in residence as defined in RSA 189:1-d, IV.

XI. "Transportation costs" means the costs of transporting pupils to and from school and other school activities reported by school districts on the MS-25 form.

198:39 Education Trust Fund Created and Invested.

I. The state treasurer shall establish an education trust fund in the treasury. Moneys in such fund shall not be used for any purpose other than to distribute adequate education grants to municipalities' school districts pursuant to RSA 198:42 and make catastrophic aid payments under RSA 186-C:18, III(d). The state treasurer shall deposit into this fund immediately upon receipt:

(a) The full amount of excess property tax payments from the department of revenue administration pursuant to RSA 198:47.

(b) All moneys due the fund in accordance with RSA 284:21-j.

(c) The school portion of any revenue sharing funds distributed pursuant to RSA 31-A which were apportioned to school districts in the property tax rate calculations in 1998.

(d) Tobacco settlement funds in the amount of \$30,000,000 annually.

(e) Any other moneys appropriated from the general fund.

II. The education trust fund shall be nonlapsing. The state treasurer shall invest that part of the fund which is not needed for immediate distribution in short-term interest-bearing investments. The income from these investments shall be returned to the fund.

198:40 Methodology for Calculating the Cost of an Adequate Education.

I. For the fiscal year beginning July 1, 1999, the average base per pupil cost of an elementary school pupil shall be \$3,303.

II. For the fiscal year beginning July 1, 2000, the average base per pupil cost of an elementary school pupil shall be \$3,468.

III. For the biennium beginning July 1, 2001, and every biennium thereafter, the average base per pupil cost of an elementary school pupil shall be established by the general court.

IV. If the general court makes no change in the average base per pupil cost of an elementary school pupil, the average base per pupil cost for the previous fiscal year shall be adjusted by the change in the con-



sumer price index between the January immediately preceding the beginning of the fiscal year of distribution and the second preceding January. In making the calculations required by this subdivision in subsequent fiscal years, the department of education shall use the average daily membership in residence, special education costs, and transportation costs for the second preceding school year and the district percentage of pupils eligible to receive a free or reduced-priced meal reported to the department of education on October 1 of the second preceding calendar year.

V. The weighted average daily membership in residence for each district shall be calculated by combining the district's elementary average daily membership in residence with its weighted high school average daily membership in residence, the district's average daily membership in residence resulting from educationally disabled children, and the district's additional average daily membership in residence resulting from elementary pupils eligible to receive a free or reduced-priced meal. The statewide weighted average daily membership in residence of pupils shall be calculated by combining the weighted average daily membership in residence of each school district in the state.

VI. For each fiscal year, the statewide cost of an adequate education for all pupils shall be calculated by multiplying the average base per pupil cost of an adequate education by the statewide weighted average daily membership in residence of pupils and then adding 70 percent of total statewide district transportation costs.

#### 198:41 Determination of Adequate Education Grants.

I. Except for municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of education shall determine the amount of the adequate education grant for the municipality as follows:

(a) Multiply the average base per pupil cost of an adequate education by the weighted average daily membership in residence for the municipality;

(b) Add to the product of subparagraph (a), 70 percent of the municipality's apportioned transportation cost;

(c) Subtract from the sum of subparagraph (b) the amount of the education property tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76:9 for the next tax year.

II. For municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of revenue administration shall determine the amount of the adequate education grant for each municipality as the lesser of the following 2 calculations:

(a) The amount calculated in accordance with paragraph I of this section; or

(b) The total amount paid for items of current education expense as determined by the department of education minus the amount of the education property tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76:9 for the next tax year.

#### 198:42 Distribution Schedule of Adequate Education Grant.

I. The adequate education grant determined in RSA 198:41 shall be distributed to each municipality's school district or districts from the education trust fund in 4 payments of 20 percent on July 1, 20 percent on September 1, 30 percent on January 1, and 30 percent on April 1 of each school year.

II. For the fiscal year ending June 30, 2000, an amount calculated by the commissioner of education necessary to fund the grants under RSA 198:41 is hereby appropriated from the education trust fund created under RSA 198:39 to the department of education.

III. The general court is constitutionally obligated to fund the cost of an adequate education, and there are hereby appropriated the funds necessary to make the payments required under RSA 198:41. The governor is authorized to draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

IV. The department of education shall certify the amount of each grant to the state treasurer and direct the payment thereof to the school district. When a payment of a grant is made to a school district, the municipality on whose behalf the payment is made, shall receive notification from the state treasurer of the amount of the payment made to its school district or districts.

198:43 Additional Education Expenditures. School districts are authorized to develop educational programs beyond those required for an adequate education and to raise and appropriate amounts necessary for such programs.

198:44 Use of Funds for Education Purposes.

I. Annually, each school district shall appropriate an amount that equals or exceeds the amount necessary to fund an adequate education for the pupils in that district. Notwithstanding any other provision of law, in the event a school district fails to appropriate at least the required amount, that amount shall be assessed and collected by the municipality, appropriated to the school district, and expended for educational purposes in accordance with paragraph IV without a vote of the school district.

II. On or before June 30 of each year, the individual with fiscal responsibility in each municipality shall submit a statement to the commissioner of revenue administration and the commissioner of education that the funds collected by the municipality pursuant to RSA 76:8 have been paid over to the school district or districts to be expended for educational purposes in accordance with paragraph IV. The statement shall include the following: *"I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete."*

III. If a municipality uses any part of the funds collected pursuant to RSA 76:8 for non-educational purposes, the municipality shall pay to the school district an amount equal to the portion of funds used for such non-educational purposes.

IV. The funds collected by municipalities pursuant to RSA 76:8 and the funds received from the state pursuant to RSA 198:42 shall be appropriated by a school district only for current education expenses or transfers to reserves or trusts funds and shall not be used for any other purpose.

V. On or before June 30 of each year, the individual with fiscal responsibility in each school district shall submit a statement to the commissioner of revenue administration and the commissioner of education that an amount of money that equals the amount necessary to fund an adequate education for the pupils in that district was used in accordance with paragraph IV. The statement shall include the following: *"I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete."*

198:45 Duties of the Department of Education and the Board of Education.

I. The department of education shall, on or before September 30 of each year, collect from the school districts final data concerning all aspects

of student attendance for the school year ending June 30 of that year necessary to establish the average daily membership, average daily membership in residence, and weighted average daily membership in residence, including the municipality of residence for each pupil for that year. The department of education shall submit a report by December 31 to the speaker of the house of representatives and the senate president to be used for purposes of determination by the legislature of the appropriation to the education trust fund. A copy of such report shall, at the same time, be given to the department of revenue administration.

II. The board of education shall adopt rules pursuant to RSA 541-A necessary to the proper administration of this subdivision.

198:46 Submission of Data by School Districts. Each school district shall submit all attendance information required by the department of education under this subdivision on or before September 30 of each year.

Excess Education Property Tax Payment

198:47 Excess Education Property Tax Payment.

I. Except as provided in paragraph IV and RSA 198:48, VI, municipalities for which the education property tax exceeds the amount necessary to fund an adequate education determined by RSA 198:40 shall collect and remit such excess amount to the department of revenue administration on or before March 15 of the tax year in which the excess occurs.

II. The amount of such excess to be remitted shall not include any income derived from the investment of funds by the town treasurer under RSA 41:29. Any funds remaining after full payment of the excess tax required in paragraph I shall become available for unrestricted use by the municipality.

III. The commissioner of the department of revenue administration shall collect from the selectmen the excess tax and pay the excess tax over to the state treasurer for deposit in the education trust fund established by RSA 198:39.

IV. The commissioner of the department of revenue administration shall calculate the excess amount owed by each municipality pursuant to paragraph I for the tax year 1999. Notwithstanding any other provision of this section, the warrant issued pursuant to RSA 76:8 shall direct municipalities to only collect and remit to the department of revenue administration not more than the following percentages of excess amounts during the tax years 1999-2001:

- (a) In tax year 1999, 25 percent;
- (b) In tax year 2000, 50 percent; and
- (c) In tax year 2001, 75 percent.

198:48 Form. The commissioner shall approve and provide forms relative to the reporting and remitting of excess education property tax by the municipalities.

#### Adequate Education and Education Financing Reform Commission

198:49 Adequate Education and Education Financing Reform Commission Established; Membership.

I. There is hereby established an adequate education and education financing reform commission which shall be composed of 19 members as follows:

(a) The chairpersons of the house education and house finance committees, appointed by the speaker of the house.

(b) The chairpersons of the senate education and senate finance committees, appointed by the president of the senate.



(c) Four members appointed by the governor, one of whom shall be an elementary or secondary special education teacher, one of whom shall be a primary teacher who does not teach special education, and one of whom shall be a member of the business community.

(d) The chancellor of the university system of New Hampshire or designee.

(e) The commissioner of the regional community-technical college system.

(f) One member from the state board of education, appointed by the chairperson of the state board of education.

(g) One member from a special education advocacy organization, appointed by such organization; and

(h) Seven members who shall be agreed to and jointly appointed by the governor, the president of the senate, and the speaker of the house consisting of the following:

(1) One local school board member, recommended by the New Hampshire School Boards Association.

(2) One school administrator, recommended by the New Hampshire School Administrators Association.

(3) One special education administrator at the elementary or secondary school level, recommended by the New Hampshire Association of Special Education Administrators.

(4) Two parents of school-age children, one of whom shall be the parent of a child with an educational disability.

(5) One member from the business community, who shall be associated with the School to Work Initiative.

(6) One school business official, recommended by the New Hampshire Association of School Business Officials.

II. The commission shall elect a chairperson from among its membership and shall form subcommittees necessary to perform its duties. The chairperson shall determine the frequency of meetings at its first meeting.

III. The members of the commission shall serve without compensation, provided that legislative members of the commission shall receive mileage at the legislative rate while attending to the duties of the commission, and provided that the parent members of the commission shall be reimbursed for travel expenses associated with their duties on the commission.

IV. In order to ensure that all students are provided an adequate education, the duties of the commission shall be as follows:

(a) Determine and recommend the costs of an adequate education for all students in New Hampshire by determining and calculating adjustments for individual school districts based on yearly inflation, cost of living variances, diseconomies of scale, transportation variability, demographics, including for school districts with a disproportionate number of students who are economically disadvantaged or have educational disabilities, and such other factors as deemed relevant.

(b) Determine and recommend the amount of state aid, including building aid, to be distributed to cities and towns based upon the cost of an adequate education as set forth in subparagraph (a) and the method for distributing the state aid.

(c) Recommend changes in policy and procedure in the areas of educational improvement and accountability.

(d) Recommend interim and permanent processes to ensure adequate planning and implementation at the local and state level of special education and educationally related services, including planning for

and development, on an interagency basis, of local school based options for pupils who have been placed in alternative or separate schools who could be placed in appropriate less restrictive options if available.

V. The commission shall be divided into the following policy subcommittees: adequacy and cost, educational improvement and accountability, and special education funding.

VI. The commission shall report its findings and recommendations no later than December 1, 2000. The report shall include, for each recommendation, proposed implementation schedules with timelines, specific steps, agencies and persons responsible, and resources needed. Where feasible, all plans, measures and initiatives shall be proposed as legislation or regulation so that they will have the force of law. All recommendations and plans shall be designed to be fully implemented no later than September 1, 2004.

VII. The department of justice, department of revenue administration, department of education, and department of health and human services shall provide the commission with assistance.

26 Appropriation. The sum of \$150,000 for the fiscal year ending June 30, 2000, is hereby appropriated for the purposes of the commission established in RSA 198:49 as inserted by section 25 of this act. This sum shall be nonlapsing until June 30, 2001. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

27 New Subparagraph; Special Education; Catastrophic Aid Payments. Amend RSA 186-C:18, III by inserting after subparagraph (c) the following new subparagraph:

(d) For each fiscal year beginning with the fiscal year ending June 30, 2000, \$2,000,000 shall be appropriated from the education trust fund established in RSA 198:39 to the department of education to assist those school districts which, under rules adopted by the state board of education, qualify for emergency assistance in meeting special education catastrophic costs pursuant to this section.

28 Reference Added. Amend RSA 189:1-d, IV to read as follows:

IV. "Average daily membership in residence" means the average daily membership of students enrolled in public schools within the district or students whose tuition is being paid by the district, *pursuant to RSA 186-C:10*, to another approved public or private school for a given school district in a given school year.

29 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:7, I to read as follows:

I. If a cooperative school district was organized prior to July 1, 1963, during the first 5 years after the formation of a cooperative school district each preexisting district shall pay its share of all capital outlay costs and *all* operational costs *in excess of the amount determined necessary to provide an adequate education under RSA 198:40* in accordance with either one of the following formulas as determined by a majority vote of the cooperative district meeting:

30 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:14, I(b) to read as follow:

(b) The commissioner of revenue administration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum, in accordance with RSA 21-J:35, which may be used as a setoff against the amount appropriated when it appears to the commissioner of revenue administration such adjustment is in the best public interest. *The commissioner of revenue administration shall apply the total amount of all adequate education grants received pursuant to RSA 198:42.*

31 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:18, III(e) to read as follows:

(e) The method of apportioning [the] *all* operating expenses *in excess of the amount determined necessary to provide an adequate education under RSA 198:40*, of the cooperative school district among the several preexisting districts and the time and manner of payment of such shares. Home education pupils who do not receive services from the cooperative school district, except an evaluation pursuant to RSA 193-A:6, II, shall not be included in the average daily membership relative to apportionment formulas.

32 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:18, IX to read as follows:

IX. The organization meeting of a cooperative school district shall be called to order by the chairperson of the cooperative school district planning board, or by the clerk-treasurer thereof, who shall serve as temporary chairperson for the first order of business which shall be the election of a moderator and of a temporary clerk, by ballot, who shall be qualified voters of the district. From and after the issuance of the certificate of formation by the board to the date of operating responsibility of the cooperative school district, such district shall have all the authority and powers of a regular school district for the purposes of incurring indebtedness, for the construction of school facilities and for such other functions as are necessary to obtain proper facilities for a complete program of education. When necessary in such interim, the school board of the cooperative school district is authorized to prepare a budget and call a special meeting of the voters of the district, which meeting shall have the same authority as an annual meeting, for the purpose of adopting the budget, making necessary appropriations, and borrowing money. Whenever the organization meeting is held on or before April 20 in any calendar year, no annual meeting need be held in such calendar year. Sums of money raised and appropriated at the organization meeting or any interim meeting prior to the first annual meeting shall be forthwith certified to the commissioner of revenue administration and the state department of education upon blanks prescribed and provided by the commissioner of revenue administration for the purpose, together with a certificate of estimated revenues, so far as known, and such other information as the commissioner of revenue administration may require. The commissioner of revenue administration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum which may be used as a setoff against the amount appropriated when it appears to the commissioner such adjustment is in the best public interest. *The commissioner of revenue administration shall apply the total amount of all adequate education grants received pursuant to RSA 198:40 as a setoff against the amount appropriated.* The commissioner of revenue administration shall certify to the state department of education the total amount of taxes to be raised for said cooperative school district and the state department of education shall determine the proportional share of said taxes to be borne by each preexisting school district and notify the commissioner of revenue administration of its determination. Upon certification by the commissioner of revenue administration the selectmen of each town shall seasonably assess the taxes as provided by law. The selectmen shall pay over to the treasurer of the cooperative district such portion of the sums so raised as may reasonably be required according to a schedule of payments needed for the year as prepared by the treasurer and approved by the cooperative school board, but no such



payment shall be greater in percentage to the total sum to be raised by one local district than that of any other local district comprising such cooperative school district.

33 Reference Change. Amend RSA 193:1, I(c) to read as follows:

(c) The relevant school district superintendent has excused a child from attendance because the child is physically or mentally unable to attend school, or has been temporarily excused upon the request of the parent for purposes agreed upon by the school authorities and the parent. Such excused absences shall not be permitted if they cause a serious adverse effect upon the student's educational progress. Students excused for such temporary absences may be claimed as full-time pupils for purposes of calculating state aid under RSA 186-C:18 and ~~[RSA 198:27-37]~~ **adequate education grants under RSA 198:41.**

34 Reimbursement Anticipation Notes; Version Effective Until July 1, 1999. Amend RSA 198:20-d to read as follows:

198:20-d Reimbursement Anticipation Notes. Notwithstanding any other provision of law to the contrary, a school district may incur debt in anticipation of reimbursement under RSA 186-C:18 **and under RSA 198:42.** The governing body, after receiving authorization for borrowing from the legislative body, may elect to recognize the proceeds of the borrowing as revenue for property tax rate setting purposes by providing written notification, prior to September 1, to the commissioner of the department of revenue administration stating the specific amount of borrowing to be recognized as revenue.

35 Reimbursement Anticipation Notes; July 1, 1999 Version. Amend RSA 198:20-d to read as follows:

198:20-d Reimbursement Anticipation Notes. Notwithstanding any other provision of law to the contrary, a school district may incur debt in anticipation of reimbursement under RSA 186-C:18 **and under RSA 198:42.** The governing body, after notice and public hearing, may elect to borrow such funds and to recognize the proceeds of the borrowing as revenue for property tax rate setting purposes by providing written **notification, prior to September 1,** to the commissioner of the department of revenue administration stating the specific amount of borrowing to be recognized as revenue. Any borrowing under this section shall be exempt from the provisions of RSA 33, relative to debt limits.

36 Sweepstakes. RSA 284:21-j is repealed and reenacted to read as follows:

284:21-j Establishment. The state treasurer shall credit all moneys received from the sweepstakes commission, and interest received on such moneys, to a special fund from which the treasurer shall pay all expenses of the commission incident to the administration of this subdivision and RSA 287-E. Any balance left in such fund after such expenses are paid shall be deposited in the education trust fund established under RSA 198:39.

37 Transition. As of July 1, 1999, all funds, from any source derived, which would be distributed as foundation aid shall be deposited in the education trust fund under RSA 198:39, including the \$62,000,000 appropriated under 1998, 389:16, II.

38 Removing Reference to Foundation Aid. Amend RSA 198:21, V to read as follows:

V. No pupil counted by any school district for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be ~~[included in average daily membership for the purposes of foundation aid or]~~ counted for the purposes of grants pursuant to RSA 198:22.

39 Removing Reference to Foundation Aid. Amend RSA 198:22, V to read as follows:

V. No pupil counted by any school for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be ~~[included in average daily membership for the purposes of foundation aid or]~~ counted for the purpose of grants pursuant to RSA 198:21.

40 Payment in Lieu of Taxes. Amend RSA 227-H:17 to read as follows:

227-H:17 Payment in Lieu of Taxes. The commissioner of revenue administration shall adopt rules, pursuant to RSA 541-A, relative to forms for application to the commissioner of revenue administration for payment for lost taxes. ~~[In any year in which no state tax is levied,]~~ Any town in which national forest lands and land held by the state for operation and development as state forestland, as defined by the department for the purposes of this section, are situated, whether acquired by gift, devise, purchase, or in any other manner, may apply, by its selectmen, to the commissioner of revenue administration on forms provided by the commissioner, annually before September 1, for the payment of an amount not exceeding the taxes for all purposes which such town might have received from taxes on such lands in such year had such lands been taxable. In the event that the amount appropriated in any biennium shall be insufficient for the purposes under this section, then the towns entitled to benefits under this section shall be reimbursed proportionately, unless otherwise subsequently ordered by the legislature.

41 Special Transition Rules. The following special transition rules shall apply to the implementation of the uniform education property tax established by sections 4-44 of this act in the first fiscal year following enactment:

I. "Total equalized value" as defined in RSA 21-J:3, XIII shall be based upon the amounts reported for the 1997 tax year as determined by the commissioner of revenue administration pursuant to RSA 21-J:3, XIII.

II. For the school year 1999/2000, the adequate education grant determined in RSA 198:41 shall be distributed to each municipality's school district or districts from the education trust fund in 4 payments as follows:

(a) On July 1, 1999, and September 1, 1999, 1/8 the total adequate education grant;

(b) On January 1, 2000, and April 1, 2000, 3/8 the total adequate education grant. The commissioner of revenue administration shall certify the amount of each grant to the state treasurer and direct the payment thereof to the municipality's school district or districts. When a payment of a grant is made to a school district, the municipality on whose behalf the payment is made, shall receive notification from the state treasurer of the amount of the payment made to its school district or districts.

III. Notwithstanding any other provision of law, the commissioner of revenue administration, for the April 1, 1999 tax year, shall issue the warrants required by RSA 76:8 on or before 30 days after the effective date of this act.

IV. Notwithstanding any other provision of law, the commissioner of revenue administration shall determine the amount of the adequate education grant for each municipality pursuant to RSA 198:41 for the 1999/2000 school year on or before 30 days after the effective date of this act.

V. For the property tax year ending March 31, 2000, municipalities which have adopted semi-annual collection of taxes shall assess the semi-annual property taxes in accordance with the provisions of RSA 76:15-a.

VI. For the property tax ending March 31, 2000, notwithstanding the provisions of RSA 76:11-a, I, the governing body of any municipality may choose to combine the local and state education property tax rates on the tax bill.

VII. Notwithstanding the provisions of RSA 80:52-a, any overpayment of property tax resulting from the implementation of this act for the tax year ending March 31, 2000 may, at the option of the governing body, be refunded to the property owner or carried forward as a credit toward the amount of taxes assessed against said property for the tax year ending March 31, 2001. Any amounts carried forward shall accrue interest at the rate prescribed in RSA 76:17-a.

VIII. For the school year ending June 30, 2000, adequate education grant moneys received by a school district pursuant to RSA 198:42 shall not be considered unanticipated funds under RSA 198:20-b. School districts may appropriate additional sums for the school year ending June 30, 2000 in accordance with the provisions of 1999, 2.

42 Special Provision for Foundation Aid. Notwithstanding the repeal pursuant to section 44 of this act of RSA 198:27-37, relative to foundation aid and alternative foundation aid, the payment of foundation aid to be made in April 1999 pursuant to RSA 198:31 before such section is repealed, shall be calculated by the department of education and distributed to the recipients as if such repeal had not occurred.

43 Severability. If any provision of this uniform education property tax enacted in sections 4-44 of this act or the application thereof to any person or circumstance is deemed invalid, the invalidity does not affect the other provisions or applications of this act which can be given effect without the invalid provisions or applications and to this end the provisions of this act are severable.

44 Repeal. The following are repealed:

I. RSA 78:20, relative to the applicability of the tobacco tax.

II. RSA 78-B:10-a, relative to the real estate transfer questionnaire.

III. RSA 83-D, relative to the tax on nuclear station property.

IV. RSA 21-J:3, XXIII, relative to the commissioner of revenue administration's duty to determine local per capita income for purposes of foundation aid.

V. RSA 21-J:13, XI, relative to the form and content of the real estate transfer questionnaire.

VI. RSA 194-B:11, VIII, relative to foundation aid in relation to charter and open enrollment schools.

VII. RSA 198:1-3, relative to required annual district property taxes.

VIII. RSA 198:15-i-RSA 198:15-q, relative to kindergarten incentive program, kindergarten aid and alternative kindergarten programs.

IX. RSA 198:27-37, relative to foundation aid and alternative foundation aid.

45 Capital Gains; Interest and Dividends Tax; Who Taxable. Amend RSA 77:3 to read as follows:

77:3 Who Taxable.

I. Taxable income is that income received from interest [and], dividends, **and net capital gains** during the tax year prior to the assessment date by:

(a) Individuals who are inhabitants or residents of this state for any part of the taxable year whose **net gains from sales of capital assets and** gross interest and dividend income from all sources exceeds [~~\$2,400~~] **\$3,000** during that taxable period.

(b) Partnerships, limited liability companies, associations, and trusts, the beneficial interest in which is not represented by transferable shares,



whose *net gains from sales of capital assets and* gross interest and dividend income from all sources exceeds [~~\$2,400~~] **\$3,000**, during the taxable year, but not including a qualified investment company as defined in RSA 77-A:1, XXI, or a trust comprising a part of an employee benefit plan, as defined in the Employee Retirement Income Security Act of 1974, section 3.

(c) Fiduciaries deriving their appointment from a court of this state whose *net gains from sales of capital assets and* gross interest and dividend income from all sources exceeds [~~\$2,400~~] **\$3,000** during the taxable year.

(d) Net capital gains from the sale of real property located in New Hampshire received by:

(1) Individuals who are not inhabitants or residents of this state for any part of the taxable year whose net gains from the sale of real property within this state exceeds \$3,000, during the taxable year.

(2) Partnerships, corporations, limited liability companies, associations, and trusts, whose net gains from the sale of real property within this state exceeds \$3,000, during the taxable year, but not including a qualified investment company as defined in RSA 77-A:1, XXI, or a trust comprising a part of an employee benefit plan, as defined in the Employee Retirement Income Security Act of 1974, section 3.

(3) Fiduciaries deriving their appointment from a court of another state whose net gains from the sale of real property within this state exceeds \$3,000 during the taxable year.

II. No person shall be subject to tax under RSA 77 solely due to its holding an ownership interest in a qualified investment company as defined in RSA 77-A:1, XXI.

46 New Paragraph; Sales of Capital Assets Taxable; Interest and Dividends Tax. Amend RSA 77:4 by inserting after paragraph VI the following new paragraph:

VII. Net gains from the sale or exchange of capital assets which shall be the net capital gain as determined for federal income tax purposes, after due allowance for losses and holding periods, from sales or exchanges of capital assets or assets treated as capital assets, other than notes, bonds or other obligations of the state of New Hampshire or any of the political subdivisions thereof, or its or their respective agencies or instrumentalities, or from transactions or events taxable to the taxpayer as such sales or exchanges, and being the net amount includable in the taxpayer's adjusted gross income, with respect to all such sales, exchanges, transactions, or events, under the provisions of the United States Internal Revenue Code in effect for the taxable year.

47 New Section; Deduction for Gains from Non-New Hampshire Real Property Subject to Tax In Another State. Amend RSA 77 by inserting after section 4-f the following new section:

77:4-g Deductions for Gains From Non-New Hampshire Property Subject to Tax in Another State. A taxable person shall be allowed to deduct from the sum of the income taxable under this chapter an amount equal to the net capital gains received from the sale of real property located outside of New Hampshire, but only to the extent that such net capital gains is subject to tax by another state.

48 Exemptions; Interest and Dividends Tax. Amend RSA 77:5 to read as follows:

77:5 Exemptions. Each taxpayer shall have the following exemptions:

I. **Taxable** income of [~~\$2,400~~] **\$3,000**.

II. An additional [~~\$1,200~~] **\$2,000** if either or both taxpayers are 65 years of age or older on the last day of the tax year.

III. An additional ~~[\$1,200]~~ **\$2,000** if either or both taxpayers are blind.

IV. An additional ~~[\$1,200]~~ **\$2,000** if either or both taxpayers are disabled, unable to work, and have not yet reached their sixty-fifth birthday.

V. All income from the sale of the taxpayer's principal residence to the extent such income is excluded from taxation under section 121 of the United States Internal Revenue Code in effect for the taxable year.

VI. All income from gains from the sale of capital assets taxed under RSA 77-A.

49 Reference to Capital Gains Added. Amend RSA 77:5-a to read as follows:

77:5-a Married Taxpayers; Joint Returns. A married taxpayer may claim the exemptions provided in RSA 77:5 for both self and spouse, regardless of the ownership of the income from **net capital gains**, interest or dividends, provided that both husband and wife file a joint return.

50 Repeal. RSA 77:4-c, relative to sale or exchange of transferable shares not taxable, is repealed.

51 Income From Trusts. Amend RSA 77:10 to read as follows:

77:10 Income from Trusts.

**I.** The income received by estates held by trustees, any one of whom is an inhabitant of this state, or has derived his appointment from a court of this state, shall be subject to the taxes imposed by this chapter, except that income received by estates held by trustees treated as grantor trusts under section 671 of the United States Internal Revenue Code shall be included in the return of their owners, to the extent that the persons to whom the income from the trust is payable, or for whose benefit it is accumulated, are inhabitants of this state.

**II. Notwithstanding the provisions of paragraph I, the total amount of net capital gains received from the sale of real property located in New Hampshire shall be subject to the taxes imposed by this chapter.**

52 Partnerships and Limited Liability Companies. Amend RSA 77:14 to read as follows:

77:14 Partnerships and Limited Liability Companies.

**I.** Partnerships and limited liability companies having a usual place of business in this state, any member of which is an inhabitant thereof, shall be subject to taxes imposed by this chapter. If any of the members of the partnership or limited liability company are not inhabitants of this state only so much of the income thereof as is proportionate to the aggregate interest of the partners or members who are inhabitants of this state in the profits of the partnership or limited liability company shall be taxed.

**II. Notwithstanding the provisions of paragraph I, the total amount of net capital gains received from the sale of real property in New Hampshire shall be subject to the taxes imposed by this chapter.**

53 Business Profits Tax; Rate Increased. Amend RSA 77-A:2 to read as follows:

77-A:2 Imposition of Tax. A tax is imposed at the rate of ~~[7]~~ **8** percent upon the taxable business profits of every business organization.

54 Business Enterprise Tax; Rate Increased; Super Majority to Increase Tax Deleted. Amend RSA 77-E:2 to read as follows:

77-E:2 Imposition of Tax. A tax is imposed at the rate of ~~[1/4]~~ **1/2** of one percent upon the taxable enterprise value tax base of every business enterprise. ~~[A 2/3 majority of those present and voting of each house of the general court shall be necessary to increase the tax rate under this section.]~~

55 Definitions; Meals and Rooms Tax; Operator. RSA 78-A:3, IV is repealed and reenacted to read as follows:

IV. "Operator" means any person operating a hotel, charging for a taxable meal, or receiving gross rental receipts, whether as owner or proprietor or lessee, sublessee, mortgagee, licensee, or otherwise.

56 New Paragraphs; Meals and Rooms Tax; Motor Vehicle Rental; Definitions. Amend RSA 78-A:3 by inserting after paragraph XIII the following new paragraphs:

XIV. "Motor vehicle" means a self-propelled vehicle designed to transport persons or property on a public highway, including a van or jeep. The term does not include the following:

- (a) A device moved only by human power;
- (b) A device used exclusively on stationary rails or tracks;
- (c) Road-building machinery; or
- (d) A mobile office.

XV. "Rental agreement" means an agreement by the owner of a motor vehicle to provide, for not longer than 180 days, the exclusive use of that motor vehicle to another for consideration.

XVI. "Gross rental receipts" means value received or promised as consideration to the owner of a motor vehicle for rental of the vehicle, but does not include:

- (a) Separately stated charges for insurance;
- (b) Charges for damages to the motor vehicle occurring during the rental agreement period;
- (c) Separately stated charges for motor fuel sold by the owner of the motor vehicle.

XVII. "Owner of a motor vehicle" means a person named in the certificate of title as the owner of the vehicle or a person who has the exclusive use of a motor vehicle by reason of rental and holds the vehicle for re-rental.

XVIII. "Department" means the department of revenue administration.

XIX. "Renter" means any person who, for consideration paid to another, is provided a vehicle under a rental agreement.

57 Meals and Rooms Tax; Licenses Required; Penalty. Amend RSA 78-A:4 to read as follows:

78-A:4 Licenses Required; Penalty.

I. Each operator shall register with the department the name and address of each place of business within the state where ~~he~~ *it* operates a hotel ~~or~~, sells taxable meals, *or rents motor vehicles*. The operator shall pay \$5 for each registration, upon receipt of which the department shall issue a license for each place in such form as it determines, attesting that the registration has been made. The license expires on June 30 in each odd-numbered year unless sooner revoked or suspended by the department. The license shall be conspicuously posted in a public area upon the premises to which it relates.

II. No person shall engage in serving taxable meals ~~or~~, renting rooms, *or renting motor vehicles* without first obtaining the license required by this section. The license is nonassignable and cannot be transferred. Any person who fails to register or obtain a license as provided in this section shall be subject to the penalty provisions of RSA 21-J:39.

58 New Paragraph; Tax Imposed on Motor Vehicle Rentals. Amend RSA 78-A:6 by inserting after paragraph II the following new paragraph:

II-a. A tax of 8 percent is imposed upon the gross rental receipts of each rental.

59 Meals and Rooms Tax; Collection of Tax. Amend RSA 78-A:7, I to read as follows:



I. The operator shall either state the amount of the tax to each occupant [or], purchaser of a meal, *or renter*, or state that the tax is included in the price of the occupancy [or], meal *or gross rental receipts received*. The operator shall demand and collect the tax from the occupant [or], purchaser, *or renter*. The occupant [or], purchaser, *or renter* shall pay the tax to the operator. If the tax is included in the price of the meal [or], occupancy, *or gross rental receipts received*, upon request the operator shall state to the purchaser [or], occupant, *or renter* the amount of the tax.

60 Meals and Rooms Tax; Collection of Tax. Amend RSA 78-A:7, IV to read as follows:

IV. In lieu of keeping detailed records of taxes collected, and in lieu of payment of the taxes collected under this chapter, an operator may, in writing, elect to compute the amount of taxes due at [7] *8* percent of the total taxable rent [or], charge for meals, *or gross rental receipts* received by [him] *it*, or both, exclusive of the taxes collected on such rents [and], charges, *and gross rental receipts*. If this election is made, the operator may not change the method of computing taxes without the written consent of the department. Any balance of the tax remaining in possession of the operator may be retained by [him] *it*.

61 Transfer Tax; Rate. RSA 78-B:1, I(b) is repealed and reenacted to read as follows:

(b) The rate of the tax is \$.75 per \$100, or fractional part thereof, of the price or consideration for such sale, grant or transfer; except that where the price or consideration is \$4,000 or less there shall be a minimum tax of \$20. The tax imposed shall be computed to the nearest whole dollar.

62 Tobacco Settlement Funds. Beginning with the fiscal year ending June 30, 1999, \$30,000,000 of funds received each fiscal year by the state of New Hampshire as a result of the settlement in 1998 of litigation against tobacco companies shall be deposited in the education trust fund established in RSA 198:39. The governor is authorized to draw a warrant for said sums out of funds received by the state from settlement of the tobacco litigation.

63 Position Established; Appropriations.

I. To carry out the financial and educational reporting requirements of this act, there are hereby established within the department of education 6 full-time permanent positions as follows:

(a) One systems development specialist IV, labor grade 25.

(b) One audit administrator, unclassified group L.

(c) Three auditors, labor grade 23.

(d) One administrative assistant, labor grade 15.

II. The sum of \$600,000 is hereby appropriated to the department of education for the biennium ending June 30, 2001, to fund the positions created in paragraph I, including salary, benefits, rent, supplies, and travel. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

III. To carry out the administrative requirements of this act, there is hereby established within the department of revenue administration 2 full-time permanent positions of systems development specialist IV, labor grade 25, and a systems development specialist III, labor grade 22.

IV. The sum of \$2,700,000 for the biennium ending June 30, 2001, is hereby appropriated to the department of revenue administration to fund the costs necessary to implement this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

V. The sum of \$100,000 for the biennium ending June 30, 2001, is hereby appropriated to the department of education to fund the costs necessary to upgrade school districts' computer systems to carry out the reporting responsibilities of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

VI. The sum of \$4,220,000 for the fiscal year ending June 30, 2000 is hereby appropriated from the education trust fund created under RSA 198:39 to the department of revenue administration to reimburse municipalities for the increased administrative costs necessary to carry out the financial purpose of this act in accordance with part I, article 28-a of the New Hampshire constitution. The amount to be distributed to each municipality shall be determined according to the proportion of state property tax assessed by such municipality to the total state property tax assessed. Such amount shall be distributed on or before September 30, 1999.

#### 64 Tax Equity and Efficiency Commission.

I. As new taxes are proposed to replace the interim funding proposed in this act for funding public education in accordance with the supreme court's Claremont II decision, it is important that a review of the tax structure and policy of the state of New Hampshire be completed to insure a fair, proportional, responsible, efficient, and uncomplicated tax structure. Therefore the general court hereby establishes a tax equity and efficiency commission to undertake a comprehensive review of all taxes currently imposed on the citizens of New Hampshire, to consider the effect of all new taxes and revenue sources proposed, and to recommend adjustments to or repeal of certain taxes which may unfairly burden certain segments of the citizenry.

II.(a) There is established a 9 member tax equity and efficiency commission. The members of the commission shall be as follows:

(1) Three house members, no more than 2 of whom shall be from the same political party, appointed by the speaker of the house.

(2) Three senators, no more than 2 of whom shall be from the same political party, appointed by the senate president.

(3) Three public members, appointed by the governor.

(4) The commissioner of the department of revenue administration, or designee.

(5) The commissioner of the department of education, or designee.

(6) The state treasurer, or designee.

(b) Committee members designated in subparagraph II(a)(4)-(6) shall be nonvoting members.

(c) Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

III. The commission shall:

(a) Review each state and local tax paid by citizens of New Hampshire, with regard to who pays each tax, its effect on certain segments of the population, its effects on the economy, jobs, family and community, and whether it duplicates other taxes.

(b) Review each tax or revenue source, including but not limited to those proposed in the 1999 and 200 legislative session, under the same criteria as required by paragraph I for review of existing taxes.

(c) Make recommendations on repealing or adjusting existing taxes, and the creation of new taxes or revenue sources to fund the state obligation.

(d) Review all state grants and revenue sharing programs to determine if any can be supported by the local tax or substituted for the school tax portion if the state absorbs the responsibility for funding public education, grades K-12.

(e) Make recommendations for a complete list of taxes or other revenue sources which establish a new tax policy for this state.

IV. The members of the commission shall elect a chairperson, vice-chairperson, and clerk from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 30 days of the effective date of this section.

V. Reports. The commission shall submit interim reports of its findings and recommendations to the speaker of the house, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before December 1, 1999 and April 1, 2000. The commission shall submit its final report and any recommendations for proposed legislation to the senate president, the speaker of the house, the senate clerk, the house clerk, the governor, and state library on or before December 1, 2000.

65 Appropriation. The sum of \$500,000 is hereby appropriated to the tax equity and efficiency commission established in section 64 of this act for the biennium ending June 30, 2001, for purposes of paying costs associated with its study and the hiring of consultants to provide analysis of all proposed and current state revenue sources. The governor is authorized to draw a warrant for said sum out of any moneys in the treasury not otherwise appropriated.

66 Severability. If any provision of this act or the application thereof to any person or circumstance is deemed invalid, the invalidity does not affect the other provisions or applications of the act which can be given effect without the invalid provisions or applications and to this end the provisions of this act are severable.

67 Effective Date.

I. Sections 53-54 of this act shall take effect upon its passage, and shall apply to returns and taxes and reports due on account of taxable periods beginning on or after January 1, 1999.

II. Sections 45-52 and 55-61 of this act shall take effect July 1, 1999.

III. Section 35 of this act shall take effect July 1, 1999 at 12:01 a.m.

IV. The remainder of this act shall take effect upon its passage and shall apply to property taxes due for the tax year ending March 31, 2000.

**1999-0919s**

### AMENDED ANALYSIS

I. This bill:

(a) Increases the rate of the tobacco tax.

(b) Establishes a uniform education property tax to provide funding for an adequate education.

(c) Taxes capital gains under the interest and dividends tax.

(d) Increases the rate of the business profits tax.

(e) Adds a tax on rental of motor vehicles.

(f) Designates \$30,000,000 annually of tobacco settlement funds received by the state for education funding.

(g) Makes appropriations to the department of education and the department of revenue administration for the purposes of the bill.

II. This bill:

(a) Establishes an educational adequacy and education financing reform commission.



(b) Establishes a system for calculating and disbursing state grants for educational adequacy.

(c) Appropriates funds to the commission for the purposes of this bill.

(d) Provides for certain catastrophic special education payments.

III. The bill also establishes a tax equity and efficiency commission and makes an appropriation to the commission.

SENATOR LARSEN: I rise to offer a floor amendment to HB 112. If I can be permitted to speak while it is being handed out? Could I also ask for these sheets to be handed out as well? The amendment that you have coming to you is one, which many of you have seen in the newspapers, heard about and heard discussed in your caucuses. Coming with it is a summary, which I hope will help each of you to look through the provisions of this amendment and understand the factors, which are in this floor amendment. We believed that it was important today for us to sit down and send a message that we are moving on the Claremont resolution of the problem, and that we are all working to come to some agreement that can get us to the Committee of Conference and have us sitting with the House and Senate together to resolve this issue in a timely way. Each of us is aware of many of the deadlines faced by this legislative body if we do not resolve this issue by May 1. We have heard of school districts that cannot get their bonding authority. We have heard of towns that are in bankruptcy or close to it. We have heard of teachers who cannot get mortgages, and we have heard of teachers who fear losing their health insurance. We know that special education contracts must go out by April 30. The best way for us to resolve this issue is to get it to a Committee of Conference to sit down. Each of you will have your votes today. You will have the opportunity to see this as it proceeds through the Committee of Conference and, certainly, we will all continue to work together to resolve this in a way that meets each of our needs and our district's needs. But we need to remain focused on the needs of keeping our schools open, keeping our towns in sound financial condition, and keeping our state in a strong bonding position. To do that, we must move today to send a message to the House that we are ready to go. The House will meet Thursday. We intend to table this after it is considered and the vote is taken, but we are sending a message to the House that we are ready to go. We expect the House to react positively to this package, and we expect some forward action by the House to get us to a Committee of Conference in this next week. So what you have before you is an amendment which includes a property tax on primary homes at \$5, commercial and second homes at \$10. The cigarette tax increase at 12 cents. The extension of the 8 percent rooms and meals through rental cars. The BET is now at .5 percent, the BPT will be at 8 percent. We had meetings with the Business and Industry Association, the NFIB, and the Technology Council, all of who are more comfortable with the way that this is drafted today and at this hour. That is the change that was made during the lunch period, and with the concurrence of a number of members of the Senate. You see that the capital gains includes increased interest and dividends deductions allowing \$6,000 for a couple, and additional \$4,000 in exemptions if that couple is over 65. It includes and extends to all interest and dividends payers providing a benefit for interest and dividends payers in this state. There is language, which increases the real estate transfer tax by \$2.50. The tobacco settlement money is \$30 million. That is not using the full amount of tobacco settlement monies. The existing state aid to state education includes some technical adjustments to reflect the increase that we received

from the sweepstakes commission most recent report of revenues that come into education from the sweepstakes fund. The total that you see is \$846 million, and, it in fact, is as close as we can get to a package which presents adequate funding to our schools, allows us to get to a Committee of Conference, and sends a message to the House that it is important that we fund our schools, that we fund them in an adequate way. I am happy to answer any questions. That is a summary of what is in there and Senator McCarley is available if you would like a presentation on the distribution on the education portion of this bill.

SENATOR FRASER: Mr. President, and members of the Senate, I rise in support of the proposed amendment. The reason that I am doing so is because it is the right thing to do. I am convinced by the leadership in this body that we have got to have some vehicle available to send a message to the House that we are prepared to deal. I would also tell my colleagues in the Senate that I am also very much interested in another plan which will be offered on Thursday, but for the moment, I truly believe that my conscience dictates that I support the proposed amendment, and I will do so.

SENATOR GORDON: Well, I guess that my conscience doesn't dictate, Mr. President. I am just rising in opposition to this particular amendment. I guess what I have heard here today...two things that I have heard here today is the reasons that we should pass this. I have heard two reasons, I guess. One is that we want to send a message to the House. Frankly, I don't think that is why we are here, and that is why we are doing this, is to be sending messages to the House. We are here to legislate and do what is right and do what we think is right. Not to get into an issue of where we are passing legislation worth \$846 million because we just want to send a message to the House. The other reason that I have heard that we ought to pass this over there is because we need to move the process along because there are so many people that are being affected by this. I happen to agree that there are a lot of people who are being affected by this, but I have to tell you that I haven't had one single constituent or one of those people affected think that this is a good plan. So, I guess that I am wondering why I would be benefiting those people if I pass something that they didn't like. This plan to me, provides no sound...no matter what the adequacy number is from the last adequacy number, nobody has explained to me exactly why that has happened. It seems to me that we need to have some type of sound foundation for funding education. It needs to be an income tax, it needs to be some type of sales tax, it needs to be gambling, it needs to be something, but there needs to be some type of sound foundation, and this certainly is not a sound foundation. The way that I would liken this to, is that you have appendicitis, and you are going to cure it with acupuncture, okay, you hurt all over, but it doesn't do any good. That is what this is. This is little pin pricks. This isn't a foundation for education in the future. You look at this thing and first of all, the effect on the real estate industry in this state...I don't know if anybody has looked at that in terms of the property tax. I don't know how you justified \$5 on residences and \$10 on business. You know we are going through this whole process because taxation, property taxation isn't fair in this state, and now for some reason, we feel that we can turn around and do this. How do you explain that? I can't explain that. Maybe you can. Then the capital gains tax on real estate, and then the real estate transfer tax. How do you do that if you represent an area that is active in selling real estate, as we all do, how do you explain that? I don't know that you can.

The tobacco settlement, I was at a hearing at the Ways and Means Committee a week ago Friday, and they were talking about the tobacco settlement monies. Basically the attorney general's office said that they don't know when we are going to get it, in fact, we don't even know if we are sure if we are going to get it. And we are devising a funding program for education in this state using tobacco settlement monies. How do you do that? I guess the business community agreed, has agreed, to the BET and the BPT, that is great. That is fine. The cigarette tax money, I think, ought to be used to fund the regular budget, the other programs in the regular budget. Senator Blaisdell, I would vote for gambling before I would vote for that. I just want to let you know that because I think that that would be a better way of funding education than doing that. I just don't think this is right. Maybe you can tell me who is going to be on this Committee of Conference, nobody has told me how many people are going to be on the Committee of Conference yet. The bottom line is that once the Committee of Conference meets, there will not be anymore discussions like this about what this should be. Basically your answer at that point in time is going to be yes or no. If this is what it takes is some more time to talk about this to get it done, then I think that is what the people of this state would expect. So I am going to vote against it, Mr. President, and thank you very much for the time.

SENATOR PIGNATELLI: I rise in support of this proposal. It is a conditional support. I am crazy about many of the items on here, but I don't believe that we have the luxury of waiting even one more day before we act and before you pass a plan to the House and before we let them know that we are willing to now go into a Committee of Conference with them. So my vote is a vote to move the process forward. It isn't necessarily a vote in favor of every item on this list. I will be supporting it, and when we are through with a Committee of Conference and when we are given something else to vote on, I will make my final decision based on what comes back from the Committee of Conference. Thank you.

SENATOR FERNALD: The previous speaker was looking for reasons to vote for this so I thought that I would offer some. I think that it is important for us to all realize where we are and that the Supreme Court has obligated us to fund an adequate education and we need to do that now. But at the same time, there are certain options that really are not open to us. One of them is the income tax. One of them is gambling. That is not going to pass either. One of them is a sales tax. If New Hampshire has a New Hampshire advantage; it is the absence of a sales tax. It gets us thousands of retail jobs, and to use a sales tax is going to cost immediate problem. You take those three tools off and you haven't got a whole lot of tools left to solve this problem. I realize that a statewide property tax is going to be harmful to certain towns, but that is where we are, because there aren't a whole lot of tools left. This is not a ringing endorsement for this plan. You know that I supported another plan, but once we take a lot of tools off of the table, I think that this is a good response to our problem. I am going to vote for this. Thank you.

SENATOR F. KING: I, too, am interested in seeing the process go forward. I was struck yesterday with a conversation that I had that caused me to think about a few years ago when senators and representatives were dealing with a very difficult issue, and that was the issue of the public service bankruptcy. I was not involved in that, and some of you probably may have been. I remember being very interested in it at the



time, and spent a lot of time studying the issue and listening to people. I remember that I was told, and the legislators at that time, told me that they were told that they had to do something or the lights are going to go out and that there will be no power in the state. Public Service has to be kept alive, and there will be no other way to deal with it and then the deal was made. Since I have been in the Senate, I have heard Senators, well at least one who now holds a higher office, be very critical of that deal. So I think that it is very important for us, regardless of how we deal with this issue, and it is important, and maybe we have taken longer than we should have to do this, but to be forced to do something because the lights are going to go out, I don't think that we can take that chance again. Whatever we do, whatever this legislature does to solve this problem, is going to have a major impact on our economy. New Hampshire exists very delicately with this economy. We have survived for a very long time without some taxes, and when you read the reports, we, in general, do pretty well in this state, and there are pockets in New Hampshire that do poorly. But on a whole, this state is very healthy. I think that it is very healthy because of our decisions that the legislature has made relative to revenue and expenses. I think that we have to be very careful as we make our final decision, that will be made in the next few days. Some future Senate may say, "why did they do that? Why did they make that decision, and look what it has done to us?" We can't take that chance. This is much more important than settling the lawsuit with Public Service over electric rates. We need to take whatever time it takes to make the right decision, and we shouldn't be stampeded into doing that. We need to have a dialogue. We need to have the entire debate that we need. I agree with Senator Gordon. Once this leaves and goes to a Committee of Conference, we know how that will be done, it will be done behind closed doors by people who will work very hard on it, but the rest of us will not have an opportunity to speak at length about the issue. So we can't pass a bill like this. The problem that we have in this legislature is that we can't solve the problem. We can't spend the amount of money that we are talking about spending unless we have an income tax, a sales tax, gambling or unreasonable statewide property tax. You can't get there from here with splinter taxes and without seriously jeopardizing certain facets of our population, and certain businesses get impacted by these different things that we do and that is dangerous. So we need to take whatever time it takes to think about it. Now I haven't seen the latest numbers, I don't think, but I looked at them and I won't ask for the answer today, but in looking at them, it looks like we have some plugged in numbers, and I would like to know the formula that generates these numbers, because there is something that I don't understand about it. So I would ask someone to sit down with me for a few minutes to explain where the numbers come from because something doesn't seem to be right. I am not saying that we are, but I am wondering if we have some plugged in numbers. I filled as many wastebaskets with plans that didn't make any sense as you all have. I would like to ask a question of some. I am interested in the cash flow projections and how the payments are going to flow out. I understand that there are some payments to be made in FY 2000. Am I right in assuming that? Can you tell me when the first payment will be made?

SENATOR MCCARLEY: Senator King, I believe that the first payment is to be made on September 1. I believe that the first year that it is going to be in six installments and the second year, I believe, the plan is for four installments, which is more similar to earlier plans that were talked

about in terms of sending the money out. We did spend some amount of time, a very significant amount of time, with the Department of Revenue Administration looking at that issue, and at this point in time, certainly communities will have to be looking at how they are going to be budgeting dollars, and may have to look at some short-term borrowing as a part of this plan, but that is sort of a reality for anything that we try to do going forward. The idea, based on what DRA has been able to do with cash flow situations is that by June 30 of 2000, the \$846 million worth of education grants will have been sent to the districts.

SENATOR F. KING: As in all of the bills that we have seen, the largest source of new revenue comes from the property tax. You would anticipate that in September having some property tax dollars available?

SENATOR MCCARLEY: Correct.

SENATOR F. KING: When do those bills go out?

SENATOR MCCARLEY: That is a very good question. The bills are supposed to be going out in another three to four weeks. The reality is that with the discussions of DRA again, because we are so late in the process for giving them any direction, they may be sending out tax bills based on half of what you did last year. **TAPE CHANGE** simply because we have left them, literally, not enough time to do the job that they have to do.

SENATOR F. KING: That answers some of my questions, thank you.

SENATOR BLAISDELL: Senator King, you and I had a discussion a couple of hours ago about my intention of what would happen if HB 112 passed the full Senate today. I think that I told you that in order to give you the opportunity to bring in your bill on Thursday, or any other person in the room that wants to bring in a bill, that it is our intention to lay this bill on the table if it should pass, so that it would give you the opportunity to take a look at what we have done and what you want to do. Is that true?

SENATOR F. KING: Yes, that is what I understand and I appreciate that.

SENATOR BLAISDELL: Thank you.

SENATOR MCCARLEY: Just very, very briefly. Certainly there are some distribution questions, and I feel like I stood on this floor one two many times and said, I don't actually have the distributions, but the truth is, I don't actually have the distributions. But I will say that I would be happy to spend time later. One of the discussions that we have had during the Senate Education hearings on adequacy, were the issues around special education costs and at risk kids and what we wanted to do. Primarily the distributions are trying to look very much at those districts where we know there is greater need, and that they have had trouble in the past and we have been able to identify that. We tried to look at the distributions that will indeed allow those dollars to go to places where we think they can do the most good for kids. Beyond that, I think that it is time. I was not here, Senator King, for the discussion of the lights going out, but I do know that the state is about to take on liability relative to dollars, things that are going to cost the state money because we can't seem to find our way to a decision. While granted it is a huge decision, and a big number, and I understand that, I think that we all believe that we are going to get there, and it seems to me that it is time to move ahead and to take what I see as a positive vote for us, rather than a vote that to some degree of late, I think that many of us have felt like we ended up voting for things that aren't going anywhere, and maybe this one can. I would encourage people to support it. Thank you.

SENATOR HOLLINGWORTH: I am unfortunately, not going to be able to vote for this piece of legislation. I think that for the record, that I need to state why. While some of the amendments seem to do improvement, the situation for some business people, it doesn't take into consideration and the taxes are better for them, it doesn't take into consideration the other people. The reason that we are here, is because the courts ruled that we had to provide an adequate education, but what they ruled more than that was that there had to be fair taxation for the people paying those taxes. We are relying, in my opinion, way to heavily on the state-wide property tax with \$529 million. I think that \$7 million is the calculation that is coming from the donor towns in addition to that. There is nothing fair about asking businesses in so-called property rich towns to subsidize rich businesses in so-called property poor towns. We said that about people. We said that there isn't anything fair about asking poor people or middle income people in so-called rich towns, to subsidize those rich people in property poor towns. This is true, only this time we are doing it a little bit with a lot of impact on the businesses in those property rich towns. One of my districts, North Hampton, which is a very small town, and there is a man in that town who has a meat store. He pays PSNH, because of what Senator Fred King mentioned that the problem with electricity, and he is in this situation where he pays about a \$1000 more a month for his freezers than if he was one mile more over the line, and happened to be in Unitil country. Now he is going to pay 23 percent more for his property taxes for this little store. This man works seven days a week. His wife and his kids all work at the business and they are probably not going to be in business too long if this kind of a taxation goes through. There is going to be a mall that is there in North Hampton that is having some difficulty falling on some very bad times. A lot of their good customers are leaving and moving over to other communities. I am sure that next year that mall is probably going to be empty. North Hampton is going to have a problem with their value and property taxation. I guess the next year after that they will probably become one of those property poor towns, and then somebody else will have to pick up the slack, or we will have to change the property taxes on that situation. I asked the other day, about the capital gains. I said that I understand that there are a lot of people who don't support it, and I understand that that is one of those things that may come out of the mix when we get into a Committee of Conference. I said to Senator Fernald, what do you think would happen if we need to come up with another \$72 or \$79 million? He said, "well, we will just take an increase in property taxes another dollar." You know what is the hardest part for me? It is that we worry about taxing this one and that one, and not doing this one, because it will impact on somebody else, but here we are, and we are willing to take some Senators who are sitting here, and I am not the only one, there are several others who happen to represent a good portion of towns, that happen to be donor towns, and we are saying too bad about you. This is the only way that we can do it. We can't pass gambling, we can't pass an income tax, we can't pass a sales tax, so you guys, you are the minority, there are only a few of you, and there are more of us, so we are just going to forget you. If you can't come with us, you are left behind. I guess that is true. I guess that is true. But is this the way that we want to solve this problem? Are we going to do what is fair for our constituents throughout this state? I know that we have to solve this, believe me. I am in Senator Gordon's corner today. I guess if there was a choice today against gambling and what we



have before us, I would support the gambling, and you know how hard I fought against it. But I cannot do this to my communities. I cannot do it to the people in my businesses that have worked so hard. I work side by side with them. I am in a small business too. I get up at six o'clock in the morning and I make beds when I am not here. I am going to see an increase of 19 percent increase in one of my businesses, and in another business I am going to see another 19 percent increase. Next door to me lives a little old lady in her 70's, she does the same thing. She doesn't go home with a profit, and we are going to charge her more money. Throughout the whole district that is what we are going to see. If this is fair, and this is the only thing that we can get through, then I guess that is what will happen. I am just saying that I hope that we have a chance to think about this a little more. It will be on the table for a week. I know that there is going to be a Committee of Conference, and I know that we are all suffering over the need that we have to do something, but let the something be right.

SENATOR J. KING: I rise in support of HB 112. Some say that we haven't worked on it long enough. We have been working on the education in the state of New Hampshire for probably at least 20 years trying to do something about it. Two years ago, the court told us to get off our duffs and do something, and here we are. April 15 was our deadline. It has gone by and now it is April 30, and May something else. Let's address the issue. I have had as many bills shown to me, some two, three or four from the same person, and some of my own and everybody elses, as old as I am, one for each year, maybe more. Me and Junie combined or Leo rather. We have had as many bills as you can think of, and we haven't been able to agree. If we come close enough today, then this is what we are going to agree on. There isn't any bills, whether it is our budget that we have been going by for the last 200 years, that eventually ends up in the Committee of Conference, and that is where we have to place our faith this time, in the Committee of Conference. I think that is basically what we are all thinking down deep. We hope that we get the right people in the Committee of Conference. We hope that they do the right thing. We have to hope for it. Something has to be done. It is a mess out there, and it is getting to be a mess in here. We have to do something. Let's get off of the proverbial whatever it is, and do something. Thank you.

SENATOR DISNARD: As you all know, I represent Claremont. I am here today for the only reason that I ran was to help lower the property taxes and help the people in my area who had been paying heavy property taxes for many years, but the rest of the state has never offered to come over and help us. Some sections of this bill, almost everyone in this room sitting as a Senator does not approve. They aren't at the highest of my priorities either, but if I went home and told the people in my district that I was stampeded into making this district, I think that they would run me out of town. I wasn't stampeded, I have been down here four or five days since we began. My predecessor was here all last year, and he tells me, former Senator Whipple, what he worked on was listening to people figure out of having to pay any money to help the poorer communities. My wife was a teacher for 49 years. I was a teacher and a superintendent for 35 years. I know what those children and those teachers meant yesterday when they held up those pink slips and the pink balloons. I understand their feelings about worrying about health insurance. I understand their feelings about the people back home and the property tax relief, so let's listen. We are here to improve education. We

are here to lower property taxes. I am happy to be able to thank those people who are voting yes on this today, to take into those considerations. I appreciate you listening to me.

SENATOR D'ALLESANDRO: I want to make one formal announcement to all of our Senators. The pink slips have gone out. Maybe the lights didn't go out, but the pink slips have gone out. And to the city of Manchester, that meant 1000 teachers don't have jobs in the fall. That is a 1000 families. If each family has 2.5 children, you are talking about 5,000 people who don't know what they will be doing in terms of income for the next year. It is an awesome responsibility. Not only no income, but no health insurance. I have to stand before those teachers and tell them that we are working on something to solve the problem. I will vote for this amendment. I want to say two things. First of all, people have worked diligently to come up with solution after solution after solution. We may not all agree with the solutions, but certainly there has been effort to bring this to closure. What we have before us is another effort to at least bring it to closure. To bring it to the point where we can go to a Committee of Conference. If I look at that from the educational aspect, every teacher who got a pink slip may leave my district. How are we going to replace those teachers next year? Other states are offering bonuses for teachers to come and sign up. We have the largest aggregate population of teachers in the state. We, the city of Manchester, could suffer the greatest loss. What about that special education student who needs to be serviced in the summer? What about that parent who is wondering how that student is going to be taken care of? Don't we have a responsibility to them? It isn't perfection. We strive but we don't make perfection. I think that Senator Trombly alluded to compromises that went into the formation of this country. He talked about the 3/5 compromise, and the great compromise. Things have been done in order to move us forward. This is something that I will vote for to help bring us forward. We all have a deep responsibility to our constituencies, but we have an even greater responsibility to the state of New Hampshire. This state and the future of this state will be built on the kind of education that we provide for those in primary, secondary and post secondary education. If we fail in that responsibility, then we have failed to deliver what this state needs going forward. As I said, is it perfection? Absolutely not. Are there items in there that I don't like? Absolutely. Those of you have read our plan, or my plans, and Senator Trombly's plans, know that there are significant differences, but I am prepared to set those differences aside so that we can move forward. I am prepared to do that because I believe that what is really at stake is the future of every youngster in this state, and I can't leave here thinking that I haven't done something to benefit those young people. Thank you, Mr. President.

SENATOR LARSEN: Senator D'Allesandro, did you stand on the State House steps with me and a number of other Senators to receive the number of pink slips from people who wanted to share their concerns? Also, isn't this bill in fact, not only sending a message to the House, but sending a message to the people whose lives are in turmoil because they don't know what is next, they don't know if they are going to hold a teaching jobs that they have held for many years, they don't know how they are going to pay their mortgages, their health insurance? Also, did you not see on their faces the concern that we do something today? This is a message not just for the House, it is a message to the state that we are ready to act.

SENATOR D'ALLESANDRO: Yes, Senator Larsen, I did stand there with you and Senators Below, Disnard and Senator Fernald, and saw teachers that were handed those pink slips, and saw in their faces and heard in their voices the desperation, what is going to happen? Where are we going to be? What can you, as elected officials, do for us, it is in your hands? Certainly their great concern about where they were going to get the money to take care of themselves and their families? We saw youngsters there who came to just speak on behalf of their teachers who know how important their teachers are to their lives. I was there, I saw it, and as a result, I am more convinced that we have to move forward. Thank you.

SENATOR SQUIRES: About 400 years ago, Isaac Newton laid down the basic laws of mechanics, one of which is that the body at rest tends to stay at rest unless some force is applied. It seems to me that this present education debate is at rest. It has not budged for a month. I think that the issues here are real. The article yesterday in the Union Leader impressed me about the problem with the IEP's that is going to come due in about ten days. The issues with the pink slips. The issues of not knowing how to print the tax bill, and the bond issues. Despite those who say that this is a problem that somehow will work its way out. It is at rest. I find a couple of things here that are difficult. I disagree with the tobacco settlement use. That should come as no surprise, and I hope that that will be looked at in the Committee of Conference. I disagree with the capital gains tax, and I hope that will be looked at. The issue as the bill is originally proposed, had to do with Sanders Associates in Nashua, the state's first or second largest employer, and the relationship that occurred at impact. It occurred to them when the business enterprise tax was worked into the original bill and that has been changed. The process bothers me a lot. I think that we are stuck because of politics. Stuck because partisanship...I think that Senator King should have a chance to present this thought and I hope that he does on Thursday. I think that if he presents it on Thursday that I am going to vote for it. But today we have to move. We can't let this go on and on and on. For that reason, I am going to vote for it, because I think that it has a chance. It has enough in it to allow a discussion in a Committee of Conference for further workings. It is as good as we are going to get, and it has a chance of passing. Thank you.

SENATOR RUSSMAN: I rise more in plight of a footnote, or an aside, or, sometimes in the trial arena, we call it a sidebar. That, I guess, is to complain about the process, something along the lines of what Senator Squires just mentioned. I think that the public is right when they are sometimes disgusted with what goes on here. I got a press release last Friday at about two minutes to five, I think that it was sent to me, relative to the plan that the Democratic Senators had come upon, and that they had fixed the problem. In all honesty, and there apparently were 12 Senators listed in that release. Now when I first came here, I was taught that you had to count to 13 before you made your announcements such as that and frankly, if we had been discussing things in a bipartisan manner over the last several months in a better fashion than we have, I think that this would have been, perhaps, come to more resolution in a much more rapid manner. Certainly we all know that this is far from over even today. We know that the House will have to work on it Thursday. We know that the Committee of Conference will ultimately make the decision, that perhaps some of us will like and



more likely than not, most of won't like it, when it comes down to actually voting this. I think that it is time for us to take a look...the people out there are worried, they are scared. They really are scared. I think that we had one bill one evening when a bunch of us got together and we were able to come up with, what perhaps was a bipartisan vote. It is the only time that it really was. In this case here, until the party in control was able to get a few Republican state Senators to make this thing bipartisan effort, frankly, it wouldn't be passing today if it weren't for some Republicans that are willing to step up to the plate, and try to move the process along, even though we don't particularly like what is in the bill, because we recognize the importance to the state of New Hampshire, and to our constituents and to the children of this state, what it takes to get the job done in terms of having things happen. I have the utmost respect for all of my colleagues, I just wish that at times that we could be less partisan in terms of each side trying to come up with a plan, and then trying to go and get a few Senators from the other side to make it work, because we have 13 to 11 split here, and we know that there are certainly divisions in both sides that are not insignificant, and certainly, that in and of itself, should dictate that we should be able to work together better. I would hope that after this bill is over, I know that Senator King has a very good effort coming forward on Thursday that we will look at with an honest look. I would certainly hope, and urge all of us, that we give the Committee of Conference the opportunity that it needs to do its work and then hopefully, be able to pull together behind that to support it and try to get this behind us for the people and our constituents as best that we can. I would hope that for the rest of the session that perhaps we could be a bit more bipartisan in terms of the solution to the problems facing the state.

**SENATOR LARSEN:** Senator Russman, would you believe that I stand to commend the work of all of this body for looking at the problems that we face and trying to come to an agreement. I also stand to recognize those who have been willing to work to get this to a point when we can, in fact, move ahead. This entire body holds, I know, the respect of each and every one hold respect for each other, but in particular for having the courage to move this issue forward. I stand to commend those who have worked hardest on it. Thank you.

**Senator Trombly moved the question.**

**Adopted.**

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Blaisdell.**

**Seconded by Senator Pignatelli.**

**The following Senators voted Yes: Fraser, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Squires, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler.**

**The following Senators voted No: F. King, Gordon, Johnson, Roberge, Francoeur, Krueger, Brown, Klemm, Hollingworth, Cohen.**

**Yeas: 14 - Nays: 10**

**Floor Amendment adopted.**

**Recess.**

**Senator Blaisdell in the Chair.**

Senator McCarley moved to have **HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products, laid on the table.

**Adopted.**

**LAIID ON THE TABLE**

**HB 112-FN-A**, increasing the tobacco tax and imposing the tax on all types of tobacco products.

**ANNOUNCEMENTS****RESOLUTION**

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time and that the bills ordered to third reading be read a third time by this resolution and all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourn to Thursday, April 22, 1999 at 10:00 a.m.

**Adopted.**

**LATE SESSION****Third Reading and Final Passage**

**HB 92**, exempting permanently disabled veterans from the requirement of reestablishing their disability status for the division of motor vehicles every 4 years to prove eligibility for special license plates.

**SB 13**, relative to the bonding authority of joint boards in joint maintenance agreements and relative to the eligibility of joint maintenance agreement districts for school building aid.

**SB 192**, relative to vital records.

**SB 193-FN**, relative to holiday pay for certain state employees.

**SB 208-FN**, establishing a "parents as scholars" program.

**HB 210**, reinstating the corporate charter of C.A.B. Real Estate, Inc.

**HB 218-L**, reinstating the corporate charter of Approved Industries, Inc.

**HB 244**, relative to the corporate charter of the Laconia Airport Authority.

**HB 250**, relative to authorized regional enrollment area schools.

**HB 288**, relative to the committee to study land management, protection of farmland, rural character, environmental quality and sprawl.

**HB 355**, relative to the dredging of harbors and channels.

**HB 490**, enabling cities to permit the mayor to vote at city council meetings.

**HCR 6**, calling on the President and the Congress to fully fund the federal government's share of the average per pupil expenditure in public elementary and secondary schools in the United States under the Individuals with Disabilities Education Act.

Senator Johnson moved that the business of the day being completed, that the Senate now adjourn to Thursday, April 22, 1999 at 10:00 a.m.

**Adopted.**

**Adjournment.**

*April 22, 1999*

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by Rev. David P. Jones, Senate Chaplain.

Tomorrow Senator Katie Wheeler's daughter is going to have a baby. Another child for you to think about the future for. Tuesday, something happened in Colorado that really does not have words that you can put around it, but it also has to do with schools and education and values. I would ask you just for a moment to be quiet and to think about the lessons that we need to learn. You do realize, I am sure, that you are conducting a class here for all of us. You are the teachers and we are the students. I just ask you as you carry out your lesson plans today to remember that all of us that are your students are learning three things from you by watching you in action. We are learning how you believe all of us should go about resolving any problem or issue that comes before us. You are showing us how and when and whether in your opinion, we should share and you are finally showing us by your example, how we are to live together as a community of people. Thank You for teaching us about those things that matter. By how you do whatever it is, you end up doing, please be sure that you are teaching us what you mean to. Let us pray:

*Oh, Lord, our King, instruct us how to care effectively but not sentimentally, how to spend wisely but not timidly or recklessly, how to teach effectively by giving the example of how to do it, not the example of how not to do it and in all our dealings with one another, may we act in ways that we would like to see our children learn to act.* Amen

Senator Krueger led the Pledge of Allegiance.

**Recess.**

**Out of Recess.**

## INTRODUCTION OF GUESTS

### REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill:

**HB 80**, making technical corrections in the banking laws.

**HB 244**, relative to the corporate charter of the Laconia Airport Authority.

**HB 249**, relative to the membership of the rivers management advisory committee.

**HB 250**, relative to authorized regional enrollment area schools.

**Senator Disnard moved adoption.**

**Adopted.**

## COMMITTEE REPORTS

**HB 90**, removing the prohibition on adoption and foster parenting by homosexual persons. Public Institutions, Health and Human Services Committee. Vote 5-1. Ought to Pass, Senator Wheeler for the committee.

**SENATOR WHEELER:** Mr. President, I rise in strong support of HB 90. This bill seeks to repeal the 1988 law that prohibits homosexuals from



adopting or serving as foster parents. This current law also prohibits heterosexual couples from adopting or fostering children if they have a homosexual family member. Florida is the only other state that has such laws placing restrictions on families seeking to adopt or foster children. One thing that I want to say at the beginning, is that I looked up in my handbook the first session that I was here in 1989-1999, and it has the roll call of the vote to ban homosexuals as foster parents. As I was reading it as a newly elected representative, and I thought what have we done? What a horrible thing to do. I have been wanting to repeal it for the last 11 years. It is a relatively new law. We have had no problems before, and it is high time that we should repeal it. There are a few things that I want to make clear. This bill is not about gay rights. Nor is this bill about religious beliefs. This bill is about what is right, and what is needed for children in New Hampshire. It is a fact that there is a shortage of foster care parents in this state. I have a daughter who is a social worker, and she works in foster care. I know this on the front lines. There is a shortage of foster care parents in this state. This bill provides additional safe and loving homes for these foster children. Every individual who submits a foster care application should be evaluated on the basis of their ability to provide a loving, stable environment. One's sexual orientation, the sexual orientation of one's family members and friends, and the sexual orientation of any other adult in that individual's household, should not determine whether or not that individual is able to serve as a foster or adoptive parent. In fact, before the ban was passed in 1988, homosexuals in New Hampshire did care for and adopt foster children. During those years there was not one single incident or complaint filed against any homosexual foster or adoptive parent. With the passage of the ban, I am ashamed to say, that this state created a discriminatory law due to the ignorance, prejudice and discrimination of those members of the 1988 legislature, the foster children of New Hampshire have suffered. These children have been forced to remain in group homes where the only people that provide for them are staff, employees who are paid to care for them. These are good people, these are employees, but it is not the same as a foster parent. I believe that it is time that we right this wrong. We are denying these children a home. We are denying these children a family. We are denying them foster and adoptive parents that want to care for them. This bill does not give preference to homosexuals applying to become foster or adoptive parents, this bill simply gives them an opportunity to be considered and evaluated with all other applicants. Like all other applicants, their applications will be examined to ensure that they can provide a loving, stable, safe and supportive environment for a foster child. There is overwhelming support for HB 90, both in the public and here in the legislature. The House passed this bill by an overwhelming majority. The testimony given in support of this bill was emotional, compelling and often very personal. There are two stories that I want to share with you today. The first is that of a couple whose own children are now grown. This couple, being of ample means with a beautiful home, plenty of land and a few animals, wish to help New Hampshire's foster children. In filling out the foster family application, they were asked to indicate whether they or any adults in their household were homosexual. Following this question was a crude, insulting and offensive definition of a homosexual. This definition exists in our RSAs today, and you don't want to read it, it is so terrible. This heterosexual couple have a son who is gay. When they inquired about their eligibility as foster parents, they were told that if they wanted to take in a foster child that they would have to do one of two things; either prohibit their gay son from visiting their home

or inform the department when their son came to visit so that the foster child could be removed from their home. Needless to say, that this couple was outraged at the very thought of having to bar their own son from their home. So I ask you, whom this law punishes? Who suffers? It is the children who are unjustly denied a loving home and caring foster parents. The second story I have to tell reflects another reason why we must repeal this ban. A heterosexual couple who opened their hearts and home to foster children found this law unconscionable. They care for a foster child, a 17-year-old boy as well as other younger boys, for whom they provide respite care. The 17-year-old boy, a foster child himself, is gay. His foster parents are accepting of this fact; however, they are faced with a problem. Due to this boy's sexual orientation he will, on his next birthday, either be banned from his home, the only true home and family that he has ever known, or his foster parents will have to stop caring for other foster children, thus forcing those younger boys that they have come to love and care for, to move onto some other home and some other family. What is profoundly sad about this situation, is that the very state that determined that this 17-year-old boy was deserving of the love and care of a foster family, is the same state that deems him unsuitable to be a foster parent himself, or even to live in the same home as another foster child. What kind of message are we giving this child? There is nothing in this world that guarantees that anyone will be a good parent. Being a good parent requires patience, being a good parent requires love and understanding. As one individual testified, being a good parent requires getting up in the morning to make one more peanut butter and jelly sandwich; however, being a good parent does not require heterosexuality. I urge you to think of the foster children in this state. I urge you to think about the nights that they spend in group homes without families, without someplace to think of as their home, without those individuals in our communities who want to give additional support and guidance to these children who so desperately need it. Think of them and repeal this ban. Vote HB 90 ought to pass. Thank you.

SENATOR COHEN: I am proud to rise in strong support of HB 90 as well. As many of you know, my wife and I have a beautiful two-and-a-half-year-old daughter named Meg. Some of you have had an opportunity to meet her. She was rather impressed with the State House on her visits. She heard a lot of talking going on in the hall and said, "Oh, there is a party." And I said, well, really it is two parties. I can tell you that I don't think that I am a perfect parent, but my wife and I very much enjoy Meg. We do our best to give her all of the love, support and attention and guidance that she ever could possibly need. Under current law, my wife and I could never be foster or adoptive parents. Now neither of us is gay, but my brother is gay. I like to have him visit my home, and he is always welcomed to stay with us and he likes to whenever he has a chance to. But under this law, because my brother is gay, we could never be adoptive or foster parents. This is crazy. This doesn't help kids at all. House Bill 90 will eliminate the current existing law which is blatantly discriminatory and does not address what is best for the children of New Hampshire. We need to pass this bill and allow foster children in New Hampshire the opportunity to be part of a loving family. This is what they deserve. I urge my colleagues to vote ought to pass on HB 90. Thank you.

SENATOR SQUIRES: The hearing on this bill lasted approximately four hours with 50 speakers. In general, the arguments in favor of the bill fell into two categories. One was the impact on parents which you have

just heard. One in particular was the story that Senator Wheeler eluded to where a foster child is living in a home and when that child turns 18, if the state is going to put further foster children in that home, that child has to get out. That is...that makes no sense and it is wrong. The other argument that the proponents raised was that there is a need. No one in the four hours of hearing presented a convincing argument, but there are tons of opportunity for children in New Hampshire to find a foster home or to be adopted. Against the bill, there was essentially two lines of arguments. One, that it will take away opportunities, although that was unspecified. But somehow this opens up for adoption and then the people who would like to adopt will not be able to do so. Not one shred of documentation for that. Then we had a religious argument. This is the part that I really want to talk about because it bothered me. The religious argument said in effect, two points. One, it is not natural. There was a lot of reference to biblical passages that as parenting by people who are not heterosexual. Then we got into the moral question. This is the part that was hard to listen to for some at some points, not all, but some. I was reminded by something that the Queen of France said when France tore itself apart over an issue like this. "Religion is a cover which serves merely to mask ill will" and yet they, the protagonist in this debate, have nothing less than religion in their hearts. Now there are many people who spoke from the heart of their core of their religious beliefs, but the mask that was mentioned talked about, disappeared on a couple of occasions. Here is what people said...I remind you that in that audience, in our House of Representatives, are people who are gay or lesbian and a speaker looks straight at them and said, "homosexuals are predators, pedophiles and perverts." That is so far beyond the way that we should speak, the words that we should use, the language that we should somehow relate to religion. God doesn't do that. I think that in America there is something about us...and James Carrol talked about this during the impeachment hearing, but it could have applied to this bill. "That it is a reminder that this nation born in Puritanism, is never more itself than when someone is being branded as morally inferior. As in the days of old, such denunciation is merely a way to hide the secret that we ourselves, to use puritan language, are sinners too." A bill that rests on the premise that a certain group of people is singled out with language and descriptions of that nature is wrong, which is why I am going to vote in support of this bill to do away with that type of discrimination.

SENATOR BELOW: I rise in support of HB 90. My wife and I have been foster parents for the past six years. When we began that process we underwent an extensive interview and family history for many hours with two social workers. It was a process of understanding our whole background and why we wanted to be foster parents. Through our involvement with the agency and the Foster Parents Conference, we became aware of the wide variety of situations, which kids end up in foster care, and sometimes it is because for instance, one or more of their parents died. Sometimes they have families, aunts and uncles who may be the brother or sister of one of the parents who might be the most appropriate caregiver, but because they are gay, and because they may not be in a position to directly take on the parenting of that child without the help of a foster agency in New Hampshire, they could not be placed, perhaps with the very brother or sister of their parents. So I just think that it is common sense here at this point that we trust the process by which agencies get parents for foster, parenting or adoption, and consider the totality of the situation, and we not artificially preclude things on this arbitrary basis. Thank you.



SENATOR TROMBLY: Two years ago I decided that I was going to take a break from politics, and then the Claremont decision came down, and I thought that it was so crucial an issue to the children of this state that perhaps I would leave the comfort of not having to come here and do every day what we come and do every day. I enjoyed that retirement immensely. But I decided that I would run for office. It was a tough campaign. Some of you may have read about it in the Union Leader. But I agreed to undergo that process, because coming here and solving problems for children was more important than any sacrifice I could make publicly or personally. The people in eight towns in Merrimack County and seven towns in Hillsborough listened to the debate, the good and the bad, and they elected me here to do a job. I voted for the Senate President, I have voted on all of the Claremont issues. I can vote on whether or not people's behavior will send them to jail. I can vote on how people's property and lives will be ordered after a divorce. I can sit down with you as an equal, and we can have dinner, and we can have candy bars, but under the law of the state of New Hampshire, I cannot adopt a child. I cannot open my home to a foster child. I cannot help those special children in need. That my friends, is the world turned upside down. But this legislation is not about me, it isn't about the gay community, it never was. If you have any question about what you should do today, maybe you should think about going to a group home where a child, just once, might like to take his or her friends home to his or her own room, and maybe there would be some pictures of rock bands and maybe there would be their stereo. It is not about, for those children, whether or not they are going to have a mommy and a daddy or two mommies or two daddy's. It is about them to grow and to be loved. That is what HB 90 is about. It is about very real people. It is about youngsters who are about to become people, and what we say to them. I have enjoyed sitting here. I know that I have to offer the children of this state every single advantage that they deserve. Whether or not I made that election would be up to me. But I ask you, my friends, please don't keep that option away from them. Thank you.

SENATOR GORDON: I rise in support of the bill today, and did not intend to speak about it. I just want to compliment Senator Trombly on his fine words. The only reason that I speak is because I was concerned about hearing some of the testimony that perhaps some of those people who may be opposed to the bill might be simply demonized as being wrong. I know that I have a substantial constituency, that if I would have asked, and I know many people who have contacted me, who have very strong feelings about this bill, and are in opposition to this bill, and I don't think that they are bad people. They have certain values and they adhere to those values and frankly, many of them don't think that it is appropriate. I still value those people individually and I respect their opinion. So I don't want everyone who is opposed to this bill simply to be demonized because they don't agree with that. I don't think that is the case here. On the other hand, I have looked at the bill and the bill, really when you get down to it, is how do we go about selecting adopted parents and the fact that we have put in a mechanical preclusion. Just a simple mechanical preclusion that says, on the basis of one criteria, you are not qualified. I just don't think that that probably is the appropriate way to go about doing it. There may be certain circumstances where persons are qualified, but that should be done in a different way. It should be done in a matter of evaluating individually whether or not

people are qualified to serve as adopted parents and whether they will provide the appropriate household to do so. I am going to vote in favor of the bill, because I think that the bill will allow my homosexual nephew to come and visit in my household, should we have an adopted child there. I am going to vote in favor of the bill, because I think that there should be a different way of evaluating how we determine whether people should be able to adopt other than this strict conclusion. I am also going to vote in favor of the bill with respect and in respect to people who feel on both sides of the issue. Thank you.

**Question is on the motion of ought to pass.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Pignatelli.**

**The following Senators voted Yes: F. King, Gordon, Fraser, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Squires, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler, Hollingworth, Cohen.**

**The following Senators voted No: Johnson, Roberge, Francoeur, Krueger, Brown, Klemm.**

**Yeas: 18 - Nays: 6**

**Adopted.**

**Ordered to third reading.**

**HB 307**, establishing a committee to study the negotiated risk agreements when patients desire to remain in a facility over the recommendations of the department of health and human services. Public Institutions, Health and Human Services Committee. Vote 6-0. Ought to Pass, Senator Gordon for the committee.

**SENATOR GORDON:** I rise in support of HB 307. This study bill is very appropriate to determine how a shared risk agreement could be developed, such that individuals in such facilities could decide to stay where they wish while alleviating liability risk for the state. Individuals want to be in control of their life decisions, including where they spend the remaining years of their lives. Shared risk or negotiated risk has become a much-talked about topic in very recent years. Former commissioner Morton mentioned the concept during discussion on SB 409, which is now in law as New Hampshire's long term care policy. This law espouses the philosophy of allowing the maximum choice for the consumer. This serves both their happiness and personal quality of life, as well as providing for the most economical and appropriate setting. The Department of Health and Human Services feels that this bill is a positive step forward in helping the agency determine the level of care that should be considered mandatory for individuals in facilities. This bill will also help DHHS determine how regulations may be amended to allow patients the right to determine what is best for them, without incurring significant risk or liability to the state. We recommend the bill as ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 358**, relative to the term of office for members of the state board of education. Education Committee. Vote 9-0. Ought to pass with amendment, Senator Squires for the committee.

1999-0871s

04/10

**Amendment to HB 358**

Amend RSA 21-N:10, III as inserted by section 1 of the bill by replacing it with the following:

The governor and council shall appoint the members of the board. Five of the members shall be selected one each from the 5 executive councilor districts and 2 members shall be selected from the public at large. Terms of office of members shall be for [5] 4 years from the January 31 on which the terms of their predecessors expired. Annually, on or before January 31, the governor shall name a member of the board who shall serve as [chairman] **chairperson** for one year and until [his] a successor is appointed. No member of the board shall serve more than [2] 3 consecutive **full** terms.

SENATOR SQUIRES: By reducing the terms of the Board of Education from five years to four, this bill gives people who want to serve on the board, the opportunity to do so without taking on an ordinarily long term commitment. The bill allows state board members to serve not more than three consecutive four-year terms. If someone wants a long-term commitment on a school board, he or she can certainly have the opportunity to do so. The School Board's Association requested this bill and the Department of Education is in agreement with it. The Education Committee passed HB 358 by a vote of 9-0, and I urge your concurrence.

**Amendment adopted.**

**Ordered to third reading.**

**SB 129-L**, requiring towns to disclose any reimbursements received to offset special education expenditures. Education Committee. Vote 9-0. Ought to pass with amendment, Senator Gordon for the committee.

1999-0870s

04/10

**Amendment to SB 129-LOCAL**

Amend the title of the bill by replacing it with the following:

**AN ACT** requiring school districts to disclose any reimbursements received to offset special education expenditures.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Actual Expenditures for Special Education. Amend RSA 32 by inserting after section 11 the following new section:

32:11-a Actual Expenditures for Special Education Programs and Services. Each school district shall provide in its annual report an accounting of actual expenditures by the district for special education programs and services for the previous 2 fiscal years. Such accounting shall include offsetting revenues from all sources, including but not limited to, reimbursements from state funds, federal funds, or medicaid funds, private or other health insurance coverage, transferred special education monies received from another school district, and any other special education resources received by the district.

2 Effective Date. This act shall take effect 60 days after its passage.



1999-0870s

## AMENDED ANALYSIS

This bill requires that school districts disclose the amount of any reimbursements received to offset special education expenditures.

SENATOR GORDON: Senate Bill 129 was filed as a result of the work of the Special Education Commission. During the course of the commission's work, we learned that very few people have an accurate grasp of what special education services actually cost. While monies come back from Medicaid, private insurance, transfers from sending districts, state or federal sources, these offsetting revenues are not reflected so that citizens can get an accurate picture of the true cost of special education services. In some cases, the expenditures are made by the school district, but the reimbursements go back to the municipalities. This is especially problematic, and causes special education services to be further vilified by district voters. In order to provide more accurate reporting, information of the true costs of special education services, SB 24 requires that monies received from all offsetting sources for the past two fiscal years be shown in the annual reports. The Education Committee recommends SB 129 as ought to pass as amended, and urges your support.

**Amendment adopted.**

**Ordered to third reading.**

**SB 11-FN**, relative to the filing fee for securities in a combined prospectus offered for sale in New Hampshire by a mutual fund. Finance Committee. Vote 8-0. Ought to Pass, Senator Klemm for the committee.

SENATOR KLEMM: Senate Bill 11 was referred to the Finance Committee by the Committee on Banks. The bill did come out with a unanimous vote out of the Banks Committee. This bill will no longer require mutual fund companies to register securities in this state with no intent to selling securities. As a result, some current fees will no longer be collected, and the upside to revenue is that some companies currently not doing business in the state may now choose to do so. The annual impact to the general fund could range from a negative \$690,000 to a plus of \$310,000. The Finance Committee recommends this bill as ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 47-FN**, relative to compensation for time lost by fish and game conservation officers for injuries received in the line of duty, and restoring certain leave time for a conservation officer injured while on duty on August 19, 1997. Finance Committee. Vote 8-0. Ought to Pass, Senator F. King for the committee.

SENATOR F. KING: The Senate Finance Committee reviewed SB 47 and found no objection to it and recommends it ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 134-FN**, relative to medicaid reimbursement rates and dental care. Finance Committee. Vote 8-0. Ought to Pass, Senator McCarley for the committee.

SENATOR MCCARLEY: Senate Bill 134 was discussed in the Finance Committee. The bill would increase the Medicaid reimbursement rates from the current rate of 65 percent to 80 percent. Certainly the hope of

this bill has been **TAPE CHANGE** more dentists to agree to see these children. We felt that it was critically important from a policy level, and the Finance Committee, after looking at the numbers, has asked that it ought to pass.

**SENATOR LARSEN:** I just rise to call attention on a busy day to what I believe is an incredibly important bill that this Senate is, hopefully, passing today. Many of us on Health and Human Services sat through a couple of years of discussions on how we were going to reimburse Medicaid rates for dental services, how could we encourage dentists of this state to see more patients who are in need, and how we could get more services to the children of this state in terms of dental care. Many, many hours were spent looking at pictures of people whose teeth had rotted away. Children who had teeth that were rotted down to the gum. This bill will send a message, this bill says that it is important that these children have a chance to be seen. It will send a message that it is time that we reimburse at a rate that does not ask beyond what can be paid, and it is important that we vote yes on this bill today. I wanted to make that statement. Thank you very much.

**SENATOR FRANCOEUR:** I don't think that there is anybody in this chamber that doesn't care about children. But as I look at this, and as the state struggles currently to fund the crisis that we currently have with Claremont, I look at this bill with over \$2 million in state expenditures per year, and that is \$4 million. The budget isn't even done yet. As we look at Claremont, you know, is this \$4 million spent better here or in Claremont? I think as legislators at this time, we really have to take a hard stance and take a look at what we are currently spending, what we expect our constituents to be able to afford in the years to come, after we get done with this situation that we currently have. This is not a bad idea, but I don't believe that today is the day that we should be making a commitment to this.

**SENATOR HOLLINGWORTH:** I recognize the concerns that the Senator has, and I would like to note that the children are now served in our emergency rooms at a greater costs. If you would take a look at the fiscal note, it has been changed, and half is coming from the federal level and half is coming from the general fund. We felt that with a 6 percent increase, that this is money well spent and it will ultimately save dollars.

**SENATOR SQUIRES:** I rise to point out a story in today's paper or yesterday's about the rising cost of lawsuit of the PSNH dispute. There is a lawsuit coming here and it is time, I think, that we spent money on dental care than legal bills; therefore, I think the bill at least ought to pass and go on and work its way through the budget process.

**Question is on the motion of ought to pass.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Brown.**

**The following Senators voted Yes: F. King, Gordon, Fraser, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Squires, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.**

**The following Senators voted No: Johnson, Roberge, Francoeur, Krueger, Brown.**

**Yeas: 19 - Nays: 5**

**Adopted.**

**Ordered to third reading.**

**Recess.**

**Senator Cohen in the Chair.**

**SB 145-FN**, relative to state financial aid for state fairs, and making an appropriation therefor. Finance Committee. Vote 7-0. Ought to Pass, Senator McCarley for the committee.

**SENATOR MCCARLEY:** This bill appropriates \$250,000 in each of the next two fiscal years to be distributed among our state fairs. There was an amendment offered in Senate Finance to up that appropriation, and I am sorry to say, having offered the amendment, that it received no support. Always bowing to the majority and what it would like to do...the Finance Committee does recommend this bill as ought to pass.

**SENATOR HOLLINGWORTH:** I would like to second what Senator McCarley said, but I would also like to add that we did recognize that the fairs are extremely important and that we are going to consider this as we go through the budget process, and if there is revenue that we can expend, we will certainly make this a special issue and we will be looking at this in the budget process.

**Adopted.**

**Ordered to third reading.**

**SB 170-FN-A**, establishing a parents as teachers pilot program in Sullivan county and making an appropriation therefor. Finance Committee. Vote 8-0. Ought to Pass, Senator Larsen for the committee.

**SENATOR LARSEN:** This bill, as amended by the Senate Education Committee, establishes parents as teachers programs in Sullivan County to be administered by the parent information center in cooperation with SAU 6 and the Department of Education. This bill creates a partnership between parents and early childhood development professionals who help parents understand what to expect from their children at each stage of development. As you know, outside are many, many children from around the region. Children who are in early childhood programs and are fortunate enough to be in those programs and to come to the State House today and sing those songs that they are singing outside. We know that given appropriate stimulation, babies develop critical cognitive and social skills from birth to age three. These early years provide a window of opportunity to enrich a child's cognitive and social development. The least intrusive and most successful way to impact early childhood experiences is to educate parents as to how they can best teach their children. Senate Bill 170 helps reach those parents and to teach them new skills. This program is made available to parents of children born and residing in Sullivan county, and we are hopeful that once that it is a successful program, that it can be extended statewide as a model with all of the problems that made this worked out. I urge you to join the Senate Finance Committee in recommending SB 170 as ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 176-FN-A**, relative to technology support for individuals and making an appropriation therefor. Finance Committee. Vote 7-0. Ought to pass with amendment, Senator Hollingworth for the committee.



1999-0887s

04/10

**Amendment to SB 176-FN-A**

Amend the bill by replacing section 2 with the following:

2 Appropriation. Notwithstanding the provisions of RSA 106-H:9, the sum of \$500,000 is hereby appropriated, for the fiscal year ending June 30, 2000, from funds held in the enhanced 911 system fund established in RSA 106-H:9 to the department of health and human services, for the purposes of this act.

1999-0887s

**AMENDED ANALYSIS**

This bill makes an appropriation of \$500,000, from funds in the enhanced 911 system fund established in RSA 106-H:9, to the department of health and human services to provide technology support, assistive devices, information, and training programs to individuals with disabilities.

SENATOR HOLLINGWORTH: This bill was referred to the Finance Committee from the Public Institutions, Health and Human Services Committee. The Finance Committee amended this bill to fund the appropriations of \$500,000 from the 911 Enhancement System established in RSA 106-H:9 to the Department of Health and Human Services to provide technological support information and training programs to individuals with disabilities. The committee would ask for your support for the amendment. Thank you.

**Amendment adopted.**

**Ordered to third reading.**

**SB 186-FN**, relative to additional cost of living adjustments for certain retired group II firemen. Finance Committee. Vote 8-0. Ought to pass with amendment, Senator J. King for the committee.

1999-0894s

10/01

**Amendment to SB 186-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to additional cost of living adjustments and increased minimum allowances for certain retired group II members, and relative to requiring spousal acknowledgement of a member's election of an optional retirement allowance.

Amend the bill by replacing all after the enacting clause with the following:

1 Service Retirement; Group II; Minimum Allowance Increased. Amend RSA 100-A:5, II (c) (1) to read as follows:

(c)(1) Notwithstanding any provision of RSA 100-A to the contrary, any group II member who has retired on a full service retirement allowance shall receive a minimum service retirement allowance of [~~\$5,200~~] **\$10,000**. In comparing the minimum service retirement allowance and the full service retirement allowance, the full service retirement allowance shall be the sum of the basic allowance plus COLA's. The provisions of this subparagraph shall not apply to a group II member who has retired on a reduced or on a vested deferred retirement allowance. In the case of a group II member who has retired on a full service retirement allowance, and who has elected to convert the retirement allowance into an optional

allowance for the surviving spouse under RSA 100-A:13, the surviving spouse shall be entitled to a proportional share of the [~~\$5,200~~] **\$10,000** which shall be based upon the optional allowance which the surviving spouse is receiving. Under no circumstances shall the provisions of this subparagraph be construed to reduce the retirement benefits being paid to a group II member as of the effective date of this subparagraph.

2 Optional Allowances; Spousal Acknowledgement of Election. Amend RSA 100-A:13, I to read as follows:

I. Any member who has reached service retirement age as provided in RSA 100-A:5, I(a), or II(a), or RSA 100-A:19-b, or any retiree within 120 days after the effective date of retirement, may elect to receive, instead of the retirement allowance otherwise payable, a retirement allowance of equivalent actuarial value under one of the options named in paragraph III, or to redesignate any such option previously elected. When the member elects to receive an optional retirement allowance under paragraph III, the beneficiary or beneficiaries whom he nominates may include the member's children, with the reduced retirement allowance payable to be divided equally among the children. The notice of election or change of retirement option shall be on a form designated by the board, **and which shall include a spousal acknowledgment with signature, if any election or change by the member.** The optional allowance shall be effective upon retirement if the election is made before the effective date of retirement, and on the first day of the month following receipt by the board of the notice of election or change of option if made during the 120-day grace period. When an election or change of option is made during the 120-day grace period, no retroactive adjustments will be made in payments already received by the retiree. After expiration of the 120-day grace period no change in option selection shall be permitted except as provided in paragraph II. If a retiree dies after filing notice of election or change of option during the 120-day grace period but before the effective date, the election or change shall be effective as of the date of death. If a member dies after filing an election for a survivorship retirement option and before the effective date of retirement, whether or not the member has filed for retirement, the beneficiary who was nominated by the member in the election of the option may elect to receive either the optional survivor benefit which the member had elected or the ordinary death benefit provided under RSA 100-A:9, whichever is more advantageous to the beneficiary; provided that, in the case of the member's death before retirement, if the beneficiary named in the survivorship option election is not the same person as the beneficiary under RSA 100-A:9, then the death benefit under RSA 100-A:9, II, and not the survivorship option shall apply.

3 New Section; Supplemental Allowances for Certain Retired Group II Members. Amend RSA 100-A by inserting after section 41-a the following new section:

100-A:11-b Supplemental Allowances for Certain Retired Group II Members.

I. An eligible retired group II member of the New Hampshire retirement system, or beneficiary, whose annual retirement allowance as reported on the member's Internal Revenue Service Form 1099-R was less than \$17,700 and who retired on or before June 30, 1998, shall receive an additional allowance or a \$10,000 minimum service retirement allowance whichever is greater, as provided in paragraph II and RSA 100-A:5, II. An eligible retired group II member shall be a member, or beneficiary of such member, who retired with at least 20 years of creditable service

under RSA 100-A:5, II, or member, or beneficiary of such member, who retired under RSA 100-A:6, II. The provisions of this section shall not apply to a group II member who has retired on a reduced or vested deferred retirement allowance. The additional allowance shall become a permanent addition to each member or beneficiary's base retirement allowance, as provided in RSA 100-A:41-a.

II. The supplemental allowance, or COLA, provided in paragraph I shall be the following percent increase for the following annual reported retirement allowance of each member:

- (a) \$15,700 - \$17,699, 3 percent;
- (b) \$13,700 - \$15,699, 4 percent;
- (c) \$11,700 - \$13,699, 5 1/2 percent;
- (d) \$9,700 - \$11,699, 7 1/2 percent;
- (e) \$7,700 - \$9,699, 10 percent;
- (f) \$5,700 - \$7,699, 14 percent; or
- (g) Less than \$5,700, 21 percent.

4 Funding of Supplemental Allowances. The total actuarial cost of the additional allowances provided in RSA 100-A:41-b as inserted by section 3 of this act shall be funded on a terminal basis from the special account established in RSA 100-A:16, II(h).

5 Repeal. RSA 100-A:5, II(c)(2) and (3), relative to the reduction in minimum service retirement allowance due to federal social security benefits or other benefits, are repealed.

6 Effective Date. This act shall take effect July 1, 1999.

**1999-0894s**

### AMENDED ANALYSIS

This bill increases the minimum allowance and grants additional COLAs to retired group II members whose annual retirement allowance is less than a certain amount. The additional COLAs are funded on a terminal basis from the special account.

The bill also adds a requirement of spousal acknowledgment for a member's election or change of an optional allowance.

SENATOR J. KING: I rise in support of SB 186. This bill was referred to the Finance Committee from the Insurance Committee. The Finance Committee amended this bill and, as amended, this bill adds "police" to the legislation. Senate Bill 186 which increases the retirement benefits by additional dollars to the COLA of those in the lower end of the benefits schedule. Those retired, but receiving less than \$17,700 a year. Those receiving benefits of less than \$10,000 receive COLAS up from 10 to 21 percent. The largest increase to any individual would be \$1,197 that year. That is those receiving \$5,700 as their annual benefit. For those receiving more than \$10,000, but less than \$17,770, COLAS range from 7.5 percent down to 3 percent. This has nothing to do with the original COLA that was given earlier in the year. The bill also adds a requirement of spousal acknowledgment before a member's election or change of any optional allowance. The Finance Committee recommends this as ought to pass.

**Amendment adopted.**

**Ordered to third reading.**

**Recess.**

**Senator Blaisdell in the Chair.**



**SB 187-FN-L**, relative to payment of group health insurance premiums for eligible retired teachers in the New Hampshire retirement system. Finance Committee. Vote 8-0. Ought to Pass, Senator Larsen for the committee.

**SENATOR LARSEN:** This bill was referred to the Finance Committee by the Insurance Committee. This bill proposes the payment of group health insurance premiums for eligible retired teachers as outlined in the bill. The special account currently has enough money to cover the cost of this bill, which is approximately \$89.1 million in fiscal year 2000. The special account balance is \$164 million. The only charge to the state would be the \$40,000 for administrative and data base purposes. The Finance Committee recommends this bill as ought to pass.

**SENATOR F. KING:** When this piece of legislation came down to the Finance Committee, and we looked at the fiscal note, I had some major concerns about it. As you know, the special accounts are set up to provide a reserve for the different groups of employees that are covered by the retirement system, and it is from the special account that COLAs are given and bills like this are granted. The fiscal note is seriously flawed. I am now comfortable with the vote that we are going to take today. I was uncomfortable with the vote that I took in the Senate Finance Committee. In fact, the fund is \$164 million. It is money that is put in to help cover the retired teachers. The actual charge is going to be \$67.4 million initially and then it will increase by \$3.3 million in year 2001, and then \$6.7 in 2002, and \$11 million in 2003. So, I believe that the special fund will be able to continue to do this. The money will be available for COLAs without having to have the communities increase their contribution, which becomes a problem if these special funds get too low. So I think that this is a good bill, and I feel comfortable in voting for it today.

**Adopted.**

**Ordered to third reading.**

**SB 207-FN**, relative to authorizing bonds for the construction and renovation of regional vocational education centers. Finance Committee. Vote 8-0. Ought to Pass, Senator Larsen for the committee.

**SENATOR LARSEN:** This bill was referred to Finance from the Education Committee. The bill as amended by the Education Committee, changes the wording of the statute to allow the treasurer to issue bonds at the request for the Department of Education for the construction and renovation of regional vocational education centers, so that the total state bond obligation at no time exceeds \$85 million. Currently the statute states total expenditures may not exceed \$85 million. So the bill changes the original concept to allow for a type of revolving fund for money as appropriated and bonded up to \$85 million. The amendment limits the amount the Department of Education can request, and the amount that the treasurer can issue to \$10 million per year. Currently we know of eight regional schools seeking renovation assistance in the next few years. Those include schools in Nashua, Keene, Berlin, Conway, Concord, Kingswood, Plymouth and Jaffery Rindge; all are considering renovations. The Jaffery Rindge I understand is considering some construction in the future. This important amendment places a \$10 million cap on outstanding bonds per biennium so that the state's exposure will not exceed \$10 million at any one time. We have worked with the state treasurer's office on this bill and the Department of Education. It is a good bill, and I urge you to vote ought to pass joining the Senate Finance Committee. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 216-FN**, allowing veterans the right to purchase credit in the retirement system for certain service in the armed forces. Insurance Committee. Vote 3-0. Ought to Pass, Senator J. King for the committee. **TAPE INAUDIBLE**

**Adopted.****Ordered to third reading.**

**SB 24**, extending the application of certain provisions of the child protection act to all children in out-of-home placements. Judiciary Committee. Vote 4-0. Ought to Pass, Senator Gordon for the committee.

**SENATOR GORDON:** Senate Bill 24 clarifies the definition of "Children in placement" for the purpose of allowing any child in an out-of-home placement to be returned to the custody of his or her parent or parents. The current standards for return of children in placement, refers only to those children placed in foster homes. There is no statutory reference as to how children placed with a relative or another person is to be handled. Senate Bill 24 remedies this oversight. The Judiciary Committee recommends SB 24 as ought to pass and urges your support.

**Adopted.****Ordered to third reading.**

**HB 229**, changing the registration fee requirement of the commercial feed law. Wildlife and Recreation Committee. Vote 4-0. Ought to Pass, Senator Roberge for the committee.

**SENATOR ROBERGE:** Mr. President and members of the Senate, this is essentially a housekeeping bill requested by the Department of Agriculture, Markets and Food. It makes the language in current law consistent with department practice. The statute requires the department to register commercial feeds and to collect a fee of \$50 per brand. The problem word is "brand." The department has always, for 80 years, registered products. It registers about 6000 products each year and collects about \$300,000 in fees. There are many more products than brands. For example, Purina is one brand with as many as 150 products. The bill simply replaces the word "brand" with the word "product" so that the department can continue in the future, as it has in the past, to maintain the revenue stream. The committee recommends ought to pass.

**Adopted.****Ordered to third reading.**

**HB 238-FN-A**, allowing the production and sale of American ginseng in the state of New Hampshire and making an appropriation therefor. Wildlife and Recreation Committee. Vote 4-0. Ought to Pass, Senator Klemm for the committee.

**SENATOR KLEMM:** This bill would enable New Hampshire growers to cultivate and distribute American ginseng. Ginseng is an endangered species regulated by the Department of Interior. Ginseng grows wild, but can be cultivated. Major markets for ginseng are in Asia and especially China. In order to produce ginseng for sale, the Department of the Interior requires states to license growers and dealers as well as to regulate cultivation. The state must certify that the ginseng offered for export to other states or countries is cultivated. This bill establishes a

program, license fees assessed on growers and dealers will be applied to the cost of administering the program. The committee recommends ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 418**, relative to accounts and reporting dates of certain funds in the fish and game department. Wildlife and Recreation Committee. Vote 3-0. Ought to Pass, Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Arthur gets the ginseng, I get the housekeeping. This is a housekeeping bill requested by the Fish and Game Department in order to satisfy recommendations arising from a recent audit of the department. The bill adjusts certain reporting dates for the executive director of the department and for the Atlantic Marine Fisheries Commission, which would now report annually. The bill also eliminates separate accounting procedures for particular accounts that are no longer active. The committee recommends ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 520**, relative to an open season for chukar partridge. Wildlife and Recreation Committee. Vote 3-0. Ought to Pass, Senator Disnard for the committee.

SENATOR DISNARD: HB 520 is relative to an open season for chukar partridge. Before you make up your mind, just listen to what this is. The bill was requested by the Fish and Game Department. Chukar partridge is not a species native to New Hampshire. These birds are imported by sportsmen who use them to train hunting dogs. Some birds escape, but they do not live or thrive in this environment and climate. Most importantly, the department has no intention of stocking chukar partridge or having any kind of program in this nature. One of the problems is that if you are a grouse hunter, and sometimes if you are out and you are inexperienced, you can't tell one from the other, and, therefore, there is a problem. The committee recommends ought to pass.

SENATOR SQUIRES: Senator Disnard, I have never seen nor have I ever heard of this species, but in this bill in front of us, I feel badly for this dove. In this bill it states that the dove **TAPE INAUDIBLE** as in mourning, is that correct, "mourn" and if so, what is the dove mourning? Or is it mourning as morning, right now?

SENATOR DISNARD: The only responsibility that I take, Senator Squires, is trying to convince the Senate to have the open season of chukar partridge.

SENATOR SQUIRES: Yes, well if someone would enlighten me about this dove at some point, I would appreciate it.

SENATOR BROWN: I would like to enlighten you about the mourning dove.

SENATOR SQUIRES: I wish to be enlightened about the mourning dove.

SENATOR BROWN: We have a lot of mourning doves. They are called that because their song sound like they are in mourning. It is a 'whooo' 'whooo'.

SENATOR SQUIRES: I thank you for this enlightenment.



SENATOR HOLLINGWORTH: Senator Brown, since you seem to know so much about birds, I always thought that it was the mourning dove, but I guess...or is there a mourning dove?

SENATOR BROWN: This is it. It is as if they are in mourning.

SENATOR HOLLINGWORTH: Is there a "morning" dove too?

SENATOR BROWN: I know of none, but I will tell you a sad story that happened two days ago. We have a whole flock of these mourning doves and they were eating seeds that we put out in the yard, and a hawk came and took one and ate it, and all of the others flew away, and there was a pile of feathers. So they were really mourning that day.

SENATOR HOLLINGWORTH: No wonder they mourn.

**Adopted.**

**Ordered to third reading.**

Senator Pignatelli offered the following resolution:

### 1999 SESSION

99-1037

04/09

### SENATE RESOLUTION

### 6

A RESOLUTION expressing shock and sympathy to the people of Littleton, Colorado over the killing and injuring of students at Columbine High School.

SPONSORS: Sen. Pignatelli, Dist 13; Sen. Below, Dist 5; Sen. Blaisdell, Dist 10; Sen. Brown, Dist 17; Sen. Cohen, Dist 24; Sen. D'Allesandro, Dist 20; Sen. Disnard, Dist 8; Sen. Fernald, Dist 11; Sen. Francoeur, Dist 14; Sen. Fraser, Dist 4; Sen. Gordon, Dist 2; Sen. Hollingworth, Dist 23; Sen. Johnson, Dist 3; Sen. F. King, Dist 1; Sen. J. King, Dist 18; Sen. Klemm, Dist 22; Sen. Krueger, Dist 16; Sen. Larsen, Dist 15; Sen. McCarley, Dist 6; Sen. Roberge, Dist 9; Sen. Russman, Dist 19; Sen. Squires, Dist 12; Sen. Trombly, Dist 7; Sen. Wheeler, Dist 21

COMMITTEE: [committee]

### ANALYSIS

This senate resolution expresses shock and sympathy to the people of Littleton, Colorado over the killing and injuring of students at Columbine High School on April 20, 1999.

99-1037

04/09

### STATE OF NEW HAMPSHIRE

*In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine*

A RESOLUTION expressing shock and sympathy to the people of Littleton, Colorado over the killing and injuring of students at Columbine High School.

Whereas, on April 20, 1999, a tragic shooting caused loss of life and injuries to unsuspecting students at Columbine High School in Littleton, Colorado; and

Whereas, this terrible tragedy has shaken and outraged the people of New Hampshire, including the 24 members of the New Hampshire Senate; now, therefore, be it

Resolved by the Senate:

That the membership sincerely expresses its deepest heartfelt sympathy to the families of those who died, and to the injured victims and their families, and to the citizens of Littleton; and

That copies of this resolution be forwarded by the Senate clerk to the mayor of Littleton and the governor of the state of Colorado.

SENATOR PIGNATELLI: I am proud that every member of the Senate has signed this resolution. Since this happened, we are all holding on hugging our children and our grandchildren a little bit tighter, and we are listening to them and trying to provide assurances to them in a world that offers fewer and fewer assurances to any of us. Our hearts go out to the people in Littleton as they struggle to come to terms with this tragedy, and we wish them well. Thank you, Mr. President.

SENATOR COHEN: Thank you, Senator Pignatelli for moving this resolution forward. I think that this is important that we do this today and send this message not only to the children of Colorado, but also to the children throughout New Hampshire and throughout America. I know that as I was driving here today, I passed a number of high school students waiting for the bus to pick them up. I do that often, but they looked different today. They looked somehow a bit more scared, less secure. This is a positive thing that we must do. Schools across America are taking action. Students of New Hampshire look to us as lawmakers, we have a power and a responsibility to do something about this. The Senate Judiciary Committee yesterday passed something that will do something about this and we will put that...it will be before the full Senate on Tuesday, I believe. This will help address the issue that we are talking about here. Enough is enough. Kids and guns and violence in the schools, we have to do something about this. I am very glad that this is being put forward, and I look forward to us taking more action to help provide some more safety and security for our students. Thank you.

**Adopted.**

### **TAKEN OFF THE TABLE**

Senator F. King moved to have **HB 112**, increasing the tobacco tax and imposing the tax on all types of tobacco products, taken off the table.

**Adopted.**

**HB 112**, increasing the tobacco tax and imposing the tax on all types of tobacco products.

Senator F. King offered a floor amendment.

Sen. F. King, Dist. 1

Sen. Gordon, Dist. 2

Sen. Johnson, Dist. 3

Sen. Fraser, Dist. 4

Sen. Roberge, Dist. 9

Sen. Squires, Dist. 12

Sen. Francoeur, Dist. 14

Sen. Krueger, Dist. 16

Sen. Brown, Dist. 17  
Sen. Russman, Dist. 19  
Sen. Klemm, Dist. 22

1999-0943s

04/09

### Floor Amendment to HB 112-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT relative to state taxes and other sources of revenue for funding an adequate education; relative to establishing the cost of an adequate education, and relative to creating a commission to study the methodology used in establishing the cost of an adequate education and a tax equity and efficiency commission, and making appropriations therefor.

Amend the bill by replacing all after the enacting clause with the following:

#### 1 Purpose; Intent.

I. In December 1997, the New Hampshire supreme court in the Claremont II decision ruled that it is the state's duty to define and provide all New Hampshire's public school students with an adequate education, and further that the manner of raising revenue to pay for an adequate education be through a system of taxation that is proportional in substance and just and reasonable in application.

II. Through the passage of House Bill 1075, the general court defined an adequate education. The definition grew out of work undertaken in the early 1990's to develop curriculum frameworks which specifically address the importance of establishing and measuring what all New Hampshire students should know and be able to do. The curriculum frameworks were developed with the widespread participation of educators, business people, government officials, community representatives, and parents. They have evolved into a critical component of providing a quality public education to New Hampshire students.

III. The New Hampshire educational improvement and assessment program ("NHEIAP") tests were developed in conjunction with the curriculum frameworks as a measure of student performance. The general court therefore finds that the NHEIAP tests are a measure of student performance and can be used to develop and implement effective methods for assessing learning and its application. The general court further finds that in determining the cost of a constitutionally adequate education, performance based outcome criteria, specifically the NHEIAP test scores, can be used to identify school districts that are delivering such a constitutionally adequate education. The NHEIAP tests are comprehensive and difficult. Students taking these tests in the third, sixth, and tenth grades are scored on 4 levels of performance: novice, basic, proficient, and advanced. The general court finds that students who score in the basic, proficient, and advanced levels on these state tests are making progress toward achieving the goals set forth in House Bill 1075.

IV. The general court recognizes the inherent imprecision, subjectivity, and difficulty in determining the cost of an adequate education. Numerous complex financial, budgetary, administrative, and educational elements must be in place in order for the state to fully meet the mandates of Claremont II. Those mandates coupled with the policy of the state recognize that an adequate public education is not a static concept removed from the demands of an evolving world. An adequate education transcends mere competence in the reading, writing and arithmetic. Such an education shall provide all students with a meaningful



opportunity to acquire the knowledge and skills necessary to prepare them for successful participation in the social, economic, scientific, technological, and civic realities of society, now and in the years to come. To ensure these fundamental rights, as recognized by the court, thoughtful and deliberate long-range planning with the involvement of many sources of expertise as well as phased-in implementation of the major elements over time is required. Concomitantly, such planning and implementation is required in order to ensure:

(a) That the educational needs of all children are met, including regular education students, students with special needs such as students with disabilities, students who are economically disadvantaged or are otherwise educationally at risk, or those who are intellectually gifted;

(b) That the needed changes are long-term in nature, truly embedded on the local and state level, gain acceptance and are both cost and educationally effective, and to those ends address underlying or systemic issues; and

(c) That compliance with all applicable federal laws occurs.

(d) That state sources of funding shall be sustainable and originate from taxes that are fair and just to citizens and businesses. That local spending decisions should remain under the control of the voters in each of the school districts. In those districts where there has been a strong commitment to education, even at the expense of other community programs, state funding should be able to be used for property tax relief if the local citizens decide not all of the additional funding is needed for the schools.

V. Under Claremont II, and as recently reaffirmed by the court in its November 1998 opinion, a funding system for a constitutionally adequate education must be put in place. This bill provides for a constitutionally adequate education that is reasonably and proportionally funded through a combination of revenue sources.

VI. However, in order to meet the aforementioned competing requirements of a long-range, carefully planned, and phased-in solution and to address the need to have an acceptable system in place, this act establishes special commissions to develop long-term plans and solutions to comprehensively and permanently meet constitutional mandates, and to undertake a review of the state's tax structure.

2 Cigarette Tax. Amend RSA 78:7 to read as follows:

78:7 Tax Imposed. A tax upon the retail consumer is hereby imposed at the rate of [37] 47 cents for each package containing 20 cigarettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes, on all tobacco products sold at retail in this state. The payment of the tax shall be evidenced by affixing stamps to the smallest packages containing the tobacco products in which such products usually are sold at retail. The word "package" as used in this section shall not include individual cigarettes. No tax is imposed on any transactions, the taxation of which by this state is prohibited by the Constitution of the United States.

3 Applicability. Section 2 of this act shall apply to all persons licensed under RSA 78:2. Such persons shall inventory all taxable tobacco products in their possession and file a report of such inventory with the department of revenue administration on a form prescribed by the commissioner within 20 days after the effective date of this act. The tax rate effective on the effective date of section 2 of this act, shall apply to such inventory and the difference, if any, in the amount paid previously on such inventory and the current effective rate of tax shall be paid with the inventory form. The inventory form shall be treated as a tax return

for the purpose of computing penalties under RSA 21-J. The treasurer shall deposit the tax revenue obtained from the 10 cent increase in the cigarette tax under RSA 78:7 as inserted by section 2 of this act into the dedicated fund established in RSA 31-A:7 to reduce the transfer of costs to municipalities.

4 New Subparagraph; Education Trust Fund. Amend RSA 6:12, I by inserting after subparagraph (vvv) the following new subparagraph:

(www) Money received under RSA 198:47, and from the sweepstakes fund, which shall be credited to the education trust fund under RSA 198:39.

5 Gender Reference Change. Amend the introductory paragraph of RSA 21-J:3 to read as follows:

In addition to the powers, duties, and functions otherwise vested by law, including RSA 21-G, in the commissioner of the department of revenue administration, ~~he~~ **the commissioner** shall:

6 Duties of Commissioner. Amend RSA 21-J:3, V to read as follows:

V. Exercise general supervision over the administration of the assessment and taxation laws of the state, **the appraisal for ad valorem taxation purposes of property within the state**, and over all assessing officers in the performance of their duties, except the board of tax and land appeals, to the end that all assessments of property be made in compliance with the laws of the state.

7 Duties of Commissioner. Amend RSA 21-J:3, XIII to read as follows:

XIII. Equalize annually **by March 31** the valuation of the property in the several towns, cities, and unincorporated places in the state by adding to or deducting from the aggregate valuation of the property in towns, cities, and unincorporated places such sums as will bring such valuations to the true and market value of the property, including the equalized value of property formerly taxed pursuant to the provisions of RSA 72:7; 72:15, I, V, VII, VIII, IX, X, and XI; 72:16; 72:17; 73:26; 73:27; and 73:11 through 16 inclusive, which were relieved from taxation by the laws of 1970, 5:3; 5:8; 57:12; and 57:15, the equalized valuation of which is to be determined by the amount of revenue returned in such year in accordance with RSA 31-A, and by making such adjustments in the value of other property from which the towns, cities, and unincorporated places receive taxes **or payments in lieu of taxes** as may be equitable and just, so that any public taxes that may be apportioned among them shall be equal and just. **In carrying out the duty to equalize the valuation of property, the commissioner shall follow the procedures set forth in RSA 21-J:9-a.**

8 New Paragraph; Duties of Commissioner. Amend RSA 21-J:3 by inserting after paragraph XXIV the following new paragraph:

XXV. Petition the board of tax and land appeals to issue an order for reassessment of property pursuant to the board's powers under RSA 71-B:16 - 19 whenever, in the commissioner's belief, the valuation of property for equalization purposes in a particular city, town, or unincorporated place is disproportional to the valuation for equalization purposes in other cities, towns, or unincorporated places in the state.

9 Division of Property Appraisal; Department of Revenue Administration. RSA 21-J:9 is repealed and reenacted to read as follows:

21-J:9 Division of Property Appraisal. There is established within the department the division of property appraisal, under the supervision of a classified director of property appraisal who shall be responsible for the following functions, in accordance with applicable laws:

I. Assisting and supervising municipalities and appraisers in appraisals and valuations as provided in RSA 21-J:10 and RSA 21-J:11.

II. Appraising state-owned forest and recreation land under RSA 227-H and RSA 216-A.

III. Annually determining the total equalized valuation of properties in the cities and towns and unincorporated places according to the requirements of RSA 21-J:9-a.

IV. Preparing a standard appraisal manual which may be used by assessing officials, and holding meetings throughout the state with such officials to instruct them in appraising property.

10 New Section; Equalization Procedure. Amend RSA 21-J by inserting after section 9 the following new section:

21-J:9-a Equalization Procedure. The following procedures shall apply in determining the equalization of property within the cities, towns, and unincorporated places as required by RSA 21-J:3, XIII:

I. The commissioner shall annually conduct a sales-assessment ratio study which shall include arm's length sales or transfers of property that occurred 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made.

II. In determining the arm's length sales or transfers that are included in the sales-assessment ratio study, the commissioner may use a randomly selected sample of such sales and transfers the size of which shall be determined by the total taxable parcels in the city, town, or unincorporated place.

III. If less than 2 percent of the total taxable parcels in a city, town, or unincorporated place has been transferred by an arm's length sale or transfer during the 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made or the commissioner determines the sales are not representative of the property within the municipality, the commissioner may choose one or more of the following options:

(a) Include appraisals of any of the taxable property of such city, town, or unincorporated place in the sales-assessment ratio study. Such appraisals shall be based on full and true market value pursuant to RSA 75:1 and shall be performed by department appraisers. The property to be appraised shall be selected by the commissioner.

(b) Consider recent equalization ratio activity in adjoining cities, towns, or unincorporated places.

(c) Include arm's length sales or transfers in the city, town, or unincorporated place, within 2-1/2 years preceding April 1 of the year preceding the tax year for which such equalization is made.

IV. The commissioner shall use the inventory of property transfers authorized by RSA 74:18 in determining the equalized value of property and may consider such other evidence as may be available to the commissioner on or before the time the final equalized value is determined.

11 New Subdivision; Municipal Services Assistance Grants. Amend RSA 31-A by inserting after section 6 the following new subdivision:

**Municipal Services Assistance Grants**

31-A:7 Intent; Establishment. The general court recognizes the obligations of municipal governments to provide necessary and desirable services to their citizens, including new or expanded programs, and hereby finds that to the extent that changes in state tax policy could have the effect of unduly limiting municipal governments in carrying out their obligations, it is appropriate to provide encouragement and support to those political subdivisions in the form of grants. The general court further recognizes that the hardships attendant to increased taxes that are placed on low income residents and those providing shel-



ter and services to those citizens result in increased burdens on municipal governments in a number of ways including but not limited to difficulty or impossibility of funding new or expanded programs, fewer housing starts and rental property construction for people of modest means, and less disposable income being available to the elderly and poor, thereby creating a greater need for municipal assistance. Therefore, the general court finds it to be in the interest of the public welfare to establish a municipal services assistance grant program to ameliorate, in part, such adverse consequences.

31-A:8 Definitions. In this subdivision:

I. "Commissioner" means the commissioner of the department of revenue administration.

II. "Municipality" means a city, town or unincorporated place.

III. "Municipal per capita income" means per capita income as reported by the department of revenue administration for each New Hampshire municipality.

IV. "State per capita income" means the median per capita income as reported by the department of revenue administration for the state of New Hampshire.

31-A:9 Determination of Municipal Services Assistance Grants.

I. The commissioner on or before October 1 shall determine the amount of municipal services assistance grant for each municipality for the next fiscal year as follows:

(a) Divide the amount of excess education property tax payments made by a municipality in the corresponding tax year by the total amount of excess education property tax payments made statewide by all municipalities in the corresponding tax year.

(b) Divide the result of the calculation in subparagraph (a) by the per capita income factor. The per capita income factor shall be obtained by dividing municipal per capita income by the median state per capita income for the corresponding tax year.

(c) Multiply the result of the calculation in subparagraph (b) by the total amount of funds in the municipal services assistance grant program.

II. The amount of municipal services assistance grant to a municipality under paragraph I of this section shall not exceed the amount of the excess education property tax payment made by a municipality for the corresponding tax year.

31-A:10 Distribution. Upon certification to the state treasurer by the commissioner, distribution of the municipal services assistance grants determined in RSA 31-A:9 shall be made by the state treasurer from sums appropriated therefor from the general fund. For the fiscal year ending June 30, 2000, such distribution shall be made on June 15, 2000. For fiscal years ending after June 30, 2000, such distribution shall be made at the time or times other payments are returnable to the municipalities pursuant to this chapter.

31-A:11 Biennial Review. The legislature shall biennially review the circumstances of municipalities relative to the intent of this subdivision to determine the need for providing assistance to such municipalities and shall adjust the amounts provided herein as it deems prudent.

12 Appraisals of Property for Ad Valorem Tax Purposes. RSA 21-J:11 is repealed and reenacted to read as follows:

21-J:11 Appraisals of Property For Ad Valorem Tax Purposes.

I. Every person, firm, or corporation intending to engage in the business of making appraisals on behalf of a municipality for tax assessment purposes in this state shall notify the commissioner of that intent in writing. No person, firm, or corporation engaged in the busi-

ness of making appraisals of taxable property for municipalities and taxing districts shall enter into any contract or agreement with any town, city, or other governmental division without first submitting the proposed contract or agreement to the commissioner for examination and approval and submitting to the commissioner evidence of financial responsibility and professional capability of personnel to be employed under the contract.

II. The commissioner, at no expense to the municipality, shall monitor appraisals of property and supervise appraisers as follows:

(a) Assure that appraisals comply with all applicable statutes and rules;

(b) Assure that appraisers are complying with the terms of any appraisal contract;

(c) Review the accuracy of appraisals by inspection, evaluation, and testing, in whole or in part, of data collected by the appraisers; and

(d) Report to the governing body on the progress and quality of the municipality's appraisal process.

III. The commissioner shall adopt rules under RSA 541-A relative to the provisions required of all contracts for appraisal services and the methodology for inspection, evaluation, and testing of data for the purposes of appraisal monitoring.

13 New Paragraph; Reports Required. Amend RSA 21-J:34 by inserting after paragraph XIV the following new paragraph:

XV. A report filed by the assessing officials of each city, town, and unincorporated place shall certify sales-assessment information necessary for the department to conduct the annual sales-assessment ratio study required by RSA 21-J:9-a. This report shall be filed within 45 days after receipt from the department.

14 Revenue Sharing. Amend RSA 31-A:4, I to read as follows:

I. Its 1978 distribution under RSA 31-A plus its share under the equalized formula of an annual increase of 5 percent in the previous year's aggregate distribution, through the year 1981, excluding revenues derived from RSA 77-A:20, ***adjusted downward by the amount apportioned to the school district in the property tax rate calculations in 1998.***

15 Board of Tax and Land Appeals; Authority. Amend RSA 71-B:5, II to read as follows:

II. To hear and determine ~~[any]~~ appeals ***by towns*** relating to the ~~[equalization of valuation performed]~~ ***equalized valuation of property determined*** by the commissioner of revenue administration pursuant to RSA 21-J:3, XIII. Any town aggrieved by ~~[an]~~ ***its*** equalized valuation as determined by the commissioner of revenue administration must appeal to the board in writing within 30 days of ~~[the town's notification]~~ ***notice*** of ~~[the]~~ ***its final*** equalized valuation by the commissioner. ***The board shall hear and make a final ruling on such appeal within 45 days of its receipt by the board. The board's decision on such appeal shall be final and not appealable.***

16 New Paragraph; Order for Reassessment. Amend RSA 71-B:16, IV to read as follows:

IV. When a complaint is filed with the board alleging that all of the taxable real estate or taxable property in a taxing district should be reassessed or newly assessed for any reason, provided that such complaint must be signed by at least 50 property taxpayers or 1/3 of the property taxpayers in the taxing district, whichever is less[-]; or

***V. When the commissioner of revenue administration files a petition with it pursuant to RSA 21-J:3, XXV.***

17 New Section; Inventory of Property Transfers. Amend RSA 74 by inserting after section 17 the following new section:

74:18 Inventory of Property Transfers.

I. In order to properly equalize the value of property under RSA 21-J:3, XIII, an inventory of property transfers shall be filed with the department of revenue administration and with the municipality where the property is located for each transfer of real estate or interest in real estate. Each form may include the following information:

(a) The buyer and seller's names and post transaction addresses and the name and address of a contact person if the buyer or seller is a trust or corporation.

(b) A description of the exact location of the property by town, street, and the assessor's map, lot, and block number.

(c) The acreage included in the sale.

(d) An accurate description of the property included in the sale, the neighborhood where the property is located, and the type and style of the property sold.

(e) The buyer's ownership interest in the property.

(f) The sale price, date of transfer, and the amount mortgaged.

(g) The description of the type of transfer that has taken place.

(h) The amount of personal property included in the sale price.

(i) Whether the property was previously occupied and whether the property will serve as the buyer's primary residence.

(j) The financing arrangements made to purchase the property to be answered at the option of the buyer.

(k) Whether any concessions were made in the sale.

(l) Whether the property was in current use.

(m) Whether land use taxes were considered in the sale.

(n) The buyer's dated signature certifying that the information indicated on the form is true.

II. The inventory of property transfers required by this section shall be filed with the department of revenue administration and with the municipality where the property is located by the purchaser, grantee, assignee, or transferee, no later than 30 days from the recording of the deed at the register of deeds or transfer of real estate, whichever is later. Persons required to file the inventory of property transfers who willfully fail to file or willfully make false statements on the forms shall be guilty of a violation.

III. No deed, recording a transfer of real estate or any interest in real estate, executed before October 1, 1995, shall be required to comply with this section.

IV. Failure to comply with this section shall not be construed to cloud title.

V. Any information provided to the department or the municipality pursuant to this section shall be exempt from the right-to-know law, RSA 91-A.

18 Education Property Tax. RSA 76:3 is repealed and reenacted to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate of \$7.00 on each \$1,000 of the value of taxable property is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except such property subject to tax under RSA 82. On or before October 1 of the tax year, the commissioner of revenue administration shall equalize the rate of taxation for each municipality, except municipalities which have undergone a total revaluation of taxable property within the prior year, by multiplying the uniform rate by the municipality's equalization ratio determined according to RSA 21-J:9-a.



19 What Taxes Assessed. Amend RSA 76:5 to read as follows:

76:5 What Taxes Assessed. The selectmen shall seasonably assess all state and county taxes for which they have the warrants of the [state] **commissioner of revenue administration** and county treasurers respectively; all taxes duly voted in their towns; and all school[~~-, school-house,~~] and village district taxes authorized by law or by vote of any school or village district duly certified to them; and all sums required to be assessed by RSA 33.

20 Commissioner's Warrant. RSA 76:8 is repealed and reenacted to read as follows:

76:8 Commissioner's Warrant.

I. The commissioner of revenue administration shall annually calculate the proportion of the education property tax to be raised by each municipality by multiplying the uniform education property tax rate by the total equalized assessed value of all property in the municipality as determined under RSA 21-J:3, XIII.

II. The commissioner shall issue a warrant under the commissioner's hand and official seal for the amount computed in paragraph I to the selectmen or assessors of each municipality on or before September 1 directing them to assess such sum and pay it to the municipality for the use of the school district or districts and, if there is an excess education tax payment due under RSA 198:47, I, directing them to assess the amount of that excess education tax payment and pay it to the department of revenue administration for deposit in the education trust fund. The commissioner shall also issue a warrant under the commissioner's hand and official seal for such sums and at such times as may be prescribed for other taxes assessed by such selectmen or assessors of the municipality.

III. All tax revenues collected pursuant to the education property tax shall be the property of the state, and each municipality who receives such funds shall serve as the collection agent of the state with respect to such funds. Each municipality shall dispose of such funds in accordance with paragraph IV.

IV.(a) Each municipality is hereby directed by the state to dispose of all tax revenues collected pursuant to the education property tax for any period as follows:

(1) That portion of such revenues that does not exceed the municipality's state average per pupil education base, shall be paid to the municipality for use of the school district or districts:

(2) That portion of such revenues that exceeds the municipality's average base per pupil cost shall be remitted to the state treasurer for deposit into the education trust fund.

(b) For purposes of this paragraph, the term average base per pupil cost means with respect to any municipality the product of:

(1) The average amount spent per pupil in the state for the immediately prior period as determined by the department of education; and

(2) The average daily membership in residence, as that term is defined in RSA 198:38, VI, for the municipality.

V. Each municipality shall be liable to the state for all taxes lawfully collected pursuant to the education property tax in such municipality. The education property tax shall be collected by all of the means and methods provided by law for the collection of property taxes. Nonpayment of the tax shall incur the same charges and interest as are imposed by law for nonpayment of local property taxes. Such charges and interest shall be payable by the municipality.

21 Commissioner's Report. RSA 76:9 is repealed and reenacted to read as follows:

76:9 Commissioner's Report. The commissioner of revenue administration shall report to the governor, the speaker of the house of representatives, the president of the senate, and the commissioner of education each year on or before October 1, a statement of the education property tax warrants to be issued for the tax year commencing April 1 of the succeeding year.

22 Information Required. Amend RSA 76:11-a, I to read as follows:

I. The tax bill which is sent to every person taxed, as provided in RSA 76:11, shall show the rate for municipal, ~~[school]~~ **local education, state education**, and county taxes separately, the assessed valuation of all lands and buildings for which said person is being taxed, and the right to apply in writing to the selectmen or assessors for an abatement of the tax assessed as provided under RSA 76:16. The department of revenue administration shall compute for each town and city the rates which are to appear on the tax bills and shall furnish the required information to the appropriate town or city.

23 Extent. Amend RSA 85:1 to read as follows:

85:1 Who May Issue. The state treasurer **or the commissioner of revenue administration**, and each county and town treasurer, may issue extents under their hands and seals respectively, in cases authorized by law, and such extents shall be deemed to be executions against the person and property.

24 New Subdivisions; State Aid for Educational Adequacy; Education Trust Fund; Commission. Amend RSA 198 by inserting after section 37 the following new subdivisions:

State Aid for Educational Adequacy; Education Trust Fund

198:38 Definitions. In this subdivision:

I. "Municipality" means a city, town, or unincorporated place.

II. "School district" means school district as defined in RSA 194:1 or RSA 195:1.

III. "Elementary school" means a school with any of the grades kindergarten through 8.

IV. "High school" means a school with any of the grades 9 through 12.

V. "Average base per pupil cost of an elementary school pupil" means the amount as determined in accordance with RSA 198:40.

VI. "Weighted pupils" means resident pupils weighted as follows:

(a) Every pupil, including kindergarten pupils, 1.0.

(b) A high school pupil, an additional weight of 0.2.

(c) An educationally disabled child, an additional weight of 1.0.

(d) An elementary pupil who is eligible to receive a free or reduced-price meal shall receive an additional weight as follows:

(1) If the pupil is in a district in which less than 12 percent of the elementary pupils are eligible to receive a free or reduced-price meal, and additional weight of zero.

(2) If the pupil is in a district where at least 12 percent but less than 24 percent of the elementary pupils are eligible to receive a free or reduced-price meal, an additional weight of 0.5.

(3) If the pupil is in a district in which at least 24 percent of the elementary pupils are eligible to receive a free or reduced-price meal, an additional weight of 1.0.

VII. "Educationally disabled child" means an educationally disabled child as defined in RSA 186-C:2, I.

VIII. "Consumer price index" means the consumer price index for all items for urban consumers for the Northeast published by the United States Department of Labor.

IX. "Average daily membership in attendance" means average daily membership in attendance as defined in RSA 189:1-d, III.

X. "Average daily membership in residence" and "resident pupils" mean the average daily membership in residence as defined in RSA 189:1-d, IV.

XI. "Transportation costs" means the costs of transporting pupils to and from school and other school activities reported by school districts on the MS-25 form.

198:39 Education Trust Fund Created and Invested.

I. The state treasurer shall establish an education trust fund in the treasury. Moneys in such fund shall not be used for any purpose other than to distribute adequate education grants to municipalities' school districts pursuant to RSA 198:42 and make catastrophic aid payments under RSA 186-C:18, III(d). The state treasurer shall deposit into this fund immediately upon receipt:

(a) The full amount of excess property tax payments from the department of revenue administration pursuant to RSA 198:47.

(b) All moneys due the fund in accordance with RSA 284:21-j.

(c) The school portion of any revenue sharing funds distributed pursuant to RSA 31-A which were apportioned to school districts in the property tax rate calculations in 1998.

(d) Tobacco settlement funds in the amount of \$30,000,000 annually.

(e) Any other moneys appropriated from the general fund.

II. The education trust fund shall be nonlapsing. The state treasurer shall invest that part of the fund which is not needed for immediate distribution in short-term interest-bearing investments. The income from these investments shall be returned to the fund.

198:40 Methodology for Calculating the Cost of an Adequate Education.

I. For the fiscal year beginning July 1, 1999, the average base per pupil cost of an elementary school pupil shall be \$2,515.

II. For the fiscal year beginning July 1, 2000, the average base per pupil cost of an elementary school pupil shall be \$3,018.

III. For the biennium beginning July 1, 2001, and every biennium thereafter, the average base per pupil cost of an elementary school pupil shall be established by the general court.

IV. If the general court makes no change in the average base per pupil cost of an elementary school pupil, the average base per pupil cost for the previous fiscal year shall be adjusted by the change in the consumer price index between the January immediately preceding the beginning of the fiscal year of distribution and the second preceding January. In making the calculations required by this subdivision in subsequent fiscal years, the department of education shall use the average daily membership in residence, special education costs, and transportation costs for the second preceding school year and the district percentage of pupils eligible to receive a free or reduced-priced meal reported to the department of education on October 1 of the second preceding calendar year.

V. The weighted average daily membership in residence for each district shall be calculated by combining the district's elementary average daily membership in residence with its weighted high school average daily membership in residence, the district's average daily membership in residence resulting from educationally disabled children, and the district's additional average daily membership in residence resulting from elemen-



tary pupils eligible to receive a free or reduced-priced meal. The statewide weighted average daily membership in residence of pupils shall be calculated by combining the weighted average daily membership in residence of each school district in the state.

VI. For each fiscal year, the statewide cost of an adequate education for all pupils shall be calculated by multiplying the average base per pupil cost of an adequate education by the statewide weighted average daily membership in residence of pupils and then adding 70 percent of total statewide district transportation costs.

198:41 Determination of Adequate Education Grants.

I. Except for municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of education shall determine the amount of the adequate education grant for the municipality as follows:

(a) Multiply the average base per pupil cost of an adequate education by the weighted average daily membership in residence for the municipality;

(b) Add to the product of subparagraph (a), 70 percent of the municipality's apportioned transportation cost;

(c) Subtract from the sum of subparagraph (b) the amount of education property tax revenues to be paid to the municipality pursuant to RSA 76:8, IV(a) reported pursuant to RSA 76:9 for the next tax year.

II. For municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of revenue administration shall determine the amount of the adequate education grant for each municipality as the lesser of the following 2 calculations:

(a) The amount calculated in accordance with paragraph I of this section; or

(b) The total amount paid for items of current education expense as determined by the department of education minus the amount of the education property tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76:9 for the next tax year.

198:42 Distribution Schedule of Adequate Education Grant.

I. The adequate education grant determined in RSA 198:41 shall be distributed to each municipality's school district or districts from the education trust fund in 4 payments of 20 percent on July 1, 20 percent on September 1, 30 percent on January 1, and 30 percent on April 1 of each school year.

II. For the fiscal year ending June 30, 2000, an amount calculated by the commissioner of education necessary to fund the grants under RSA 198:41 is hereby appropriated from the education trust fund created under RSA 198:39 to the department of education.

III. The general court is constitutionally obligated to fund the cost of an adequate education, and there are hereby appropriated the funds necessary to make the payments required under RSA 198:41. The governor is authorized to draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

IV. The department of education shall certify the amount of each grant to the state treasurer and direct the payment thereof to the school district. When a payment of a grant is made to a school district, the municipality on whose behalf the payment is made, shall receive notification from the state treasurer of the amount of the payment made to its school district or districts.

198:43 Additional Education Expenditures. School districts are authorized to develop educational programs beyond those required for an adequate education and to raise and appropriate amounts necessary for such programs.

198:44 Use of Funds for Education Purposes.

I. Annually, each school district shall appropriate an amount that equals or exceeds the amount necessary to fund an adequate education for the pupils in that district. Notwithstanding any other provision of law, in the event a school district fails to appropriate at least the required amount, that amount shall be assessed and collected by the municipality, appropriated to the school district, and expended for educational purposes in accordance with paragraph IV without a vote of the school district.

II. On or before June 30 of each year, the individual with fiscal responsibility in each municipality shall submit a statement to the commissioner of revenue administration and the commissioner of education that the funds collected by the municipality pursuant to RSA 76:8, including the portion of state education tax revenues that are paid directly to municipalities pursuant to RSA 76:8, IV(a) and the funds received from the state pursuant to RSA 198:42, have been paid over to the school district or districts to be expended for educational purposes in accordance with paragraph IV. The statement shall include the following: *"I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete."*

III. If a municipality uses any part of the funds collected pursuant to RSA 76:8 for non-educational purposes, the municipality shall pay to the school district an amount equal to the portion of funds used for such non-educational purposes.

IV. The funds collected by municipalities pursuant to RSA 76:8, including the portion of state education tax revenues that are paid directly to municipalities pursuant to RSA 76:8, IV(a) and the funds received from the state pursuant to RSA 198:42, and the funds received from the state pursuant to RSA 198:42 shall be appropriated by a school district only for current education expenses or transfers to reserves or trusts funds and shall not be used for any other purpose.

V. On or before June 30 of each year, the individual with fiscal responsibility in each school district shall submit a statement to the commissioner of revenue administration and the commissioner of education that an amount of money that equals the amount necessary to fund an adequate education for the pupils in that district was used in accordance with paragraph IV. The statement shall include the following: *"I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete."*

198:45 Duties of the Department of Education and the Board of Education.

I. The department of education shall, on or before September 30 of each year, collect from the school districts final data concerning all aspects of student attendance for the school year ending June 30 of that year necessary to establish the average daily membership, average daily membership in residence, and weighted average daily membership in residence, including the municipality of residence for each pupil for that year. The department of education shall submit a report by December 31 to the speaker of the house of representatives and the senate president to be used for purposes of determination by the legislature of the appropriation to the education trust fund. A copy of such report shall, at the same time, be given to the department of revenue administration.

II. The board of education shall adopt rules pursuant to RSA 541-A necessary to the proper administration of this subdivision.

198:46 Submission of Data by School Districts. Each school district shall submit all attendance information required by the department of education under this subdivision on or before September 30 of each year.

Adequate Education and

Education Financing Reform Commission

198:47 Adequate Education and Education Financing Reform Commission Established; Membership.

I. There is hereby established an adequate education and education financing reform commission which shall be composed of 19 members as follows:

(a) The chairpersons of the house education and house finance committees, appointed by the speaker of the house.

(b) The chairpersons of the senate education and senate finance committees, appointed by the president of the senate.

(c) Four members appointed by the governor, one of whom shall be an elementary or secondary special education teacher, one of whom shall be a primary teacher who does not teach special education, and one of whom shall be a member of the business community.

(d) The chancellor of the university system of New Hampshire or designee.

(e) The commissioner of the regional community-technical college system.

(f) One member from the state board of education, appointed by the chairperson of the state board of education.

(g) One member from a special education advocacy organization, appointed by such organization; and

(h) Seven members who shall be agreed to and jointly appointed by the governor, the president of the senate, and the speaker of the house consisting of the following:

(1) One local school board member, recommended by the New Hampshire School Boards Association.

(2) One school administrator, recommended by the New Hampshire School Administrators Association.

(3) One special education administrator at the elementary or secondary school level, recommended by the New Hampshire Association of Special Education Administrators.

(4) Two parents of school-age children, one of whom shall be the parent of a child with an educational disability.

(5) One member from the business community, who shall be associated with the School to Work Initiative.

(6) One school business official, recommended by the New Hampshire Association of School Business Officials.

II. The commission shall elect a chairperson from among its membership and shall form subcommittees necessary to perform its duties. The chairperson shall determine the frequency of meetings at its first meeting.

III. The members of the commission shall serve without compensation, provided that legislative members of the commission shall receive mileage at the legislative rate while attending to the duties of the commission, and provided that the parent members of the commission shall be reimbursed for travel expenses associated with their duties on the commission.

IV. In order to ensure that all students are provided an adequate education, the duties of the commission shall be as follows:



(a) Determine and recommend the costs of an adequate education for all students in New Hampshire by determining and calculating adjustments for individual school districts based on yearly inflation, cost of living variances, diseconomies of scale, transportation variability, demographics, including for school districts with a disproportionate number of students who are economically disadvantaged or have educational disabilities, and such other factors as deemed relevant.

(b) Determine and recommend the amount of state aid, including building aid, to be distributed to cities and towns based upon the cost of an adequate education as set forth in subparagraph (a) and the method for distributing the state aid.

(c) Recommend changes in policy and procedure in the areas of educational improvement and accountability.

(d) Recommend interim and permanent processes to ensure adequate planning and implementation at the local and state level of special education and educationally related services, including planning for and development, on an interagency basis, of local school based options for pupils who have been placed in alternative or separate schools who could be placed in appropriate less restrictive options if available.

V. The commission shall be divided into the following policy subcommittees: adequacy and cost, educational improvement and accountability, and special education funding.

VI. The commission shall report its findings and recommendations no later than December 1, 2000. The report shall include, for each recommendation, proposed implementation schedules with timelines, specific steps, agencies and persons responsible, and resources needed. Where feasible, all plans, measures and initiatives shall be proposed as legislation or regulation so that they will have the force of law. All recommendations and plans shall be designed to be fully implemented no later than September 1, 2004.

VII. The department of justice, department of revenue administration, department of education, and department of health and human services shall provide the commission with assistance.

25 Appropriation. The sum of \$150,000 for the fiscal year ending June 30, 2000, is hereby appropriated for the purposes of the commission established in RSA 198:47 as inserted by section 24 of this act. This sum shall be nonlapsing until June 30, 2001. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

26 New Subparagraph; Special Education; Catastrophic Aid Payments. Amend RSA 186-C:18, III by inserting after subparagraph (c) the following new subparagraph:

(d) For each fiscal year beginning with the fiscal year ending June 30, 2000, \$2,000,000 shall be appropriated from the education trust fund established in RSA 198:39 to the department of education to assist those school districts which, under rules adopted by the state board of education, qualify for emergency assistance in meeting special education catastrophic costs pursuant to this section.

27 Reference Added. Amend RSA 189:1-d, IV to read as follows:

IV. "Average daily membership in residence" means the average daily membership of students enrolled in public schools within the district or students whose tuition is being paid by the district, *pursuant to RSA 186-C:10*, to another approved public or private school for a given school district in a given school year.

28 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:7, I to read as follows:

I. If a cooperative school district was organized prior to July 1, 1963, during the first 5 years after the formation of a cooperative school district each preexisting district shall pay its share of all capital outlay costs and *all* operational costs *in excess of the amount determined necessary to provide an adequate education under RSA 198:40* in accordance with either one of the following formulas as determined by a majority vote of the cooperative district meeting:

29 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:14, I(b) to read as follow:

(b) The commissioner of revenue administration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum, in accordance with RSA 21-J:35, which may be used as a setoff against the amount appropriated when it appears to the commissioner of revenue administration such adjustment is in the best public interest. *The commissioner of revenue administration shall apply the total amount of all adequate education grants received pursuant to RSA 198:42.*

30 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:18, III(e) to read as follows:

(e) The method of apportioning [the] *all* operating expenses *in excess of the amount determined necessary to provide an adequate education under RSA 198:40*, of the cooperative school district among the several preexisting districts and the time and manner of payment of such shares. Home education pupils who do not receive services from the cooperative school district, except an evaluation pursuant to RSA 193-A:6, II, shall not be included in the average daily membership relative to apportionment formulas.

31 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:18, IX to read as follows:

IX. The organization meeting of a cooperative school district shall be called to order by the chairperson of the cooperative school district planning board, or by the clerk-treasurer thereof, who shall serve as temporary chairperson for the first order of business which shall be the election of a moderator and of a temporary clerk, by ballot, who shall be qualified voters of the district. From and after the issuance of the certificate of formation by the board to the date of operating responsibility of the cooperative school district, such district shall have all the authority and powers of a regular school district for the purposes of incurring indebtedness, for the construction of school facilities and for such other functions as are necessary to obtain proper facilities for a complete program of education. When necessary in such interim, the school board of the cooperative school district is authorized to prepare a budget and call a special meeting of the voters of the district, which meeting shall have the same authority as an annual meeting, for the purpose of adopting the budget, making necessary appropriations, and borrowing money. Whenever the organization meeting is held on or before April 20 in any calendar year, no annual meeting need be held in such calendar year. Sums of money raised and appropriated at the organization meeting or any interim meeting prior to the first annual meeting shall be forthwith certified to the commissioner of revenue administration and the state department of education upon blanks prescribed and provided by the commissioner of revenue administration for the purpose, together with a certificate of estimated revenues, so far as known, and such other information as the commissioner of revenue administration may require. The commissioner of revenue admin-

istration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum which may be used as a setoff against the amount appropriated when it appears to the commissioner such adjustment is in the best public interest. ***The commissioner of revenue administration shall apply the total amount of all adequate education grants received pursuant to RSA 198:40 as a setoff against the amount appropriated.*** The commissioner of revenue administration shall certify to the state department of education the total amount of taxes to be raised for said cooperative school district and the state department of education shall determine the proportional share of said taxes to be borne by each pre-existing school district and notify the commissioner of revenue administration of its determination. Upon certification by the commissioner of revenue administration the selectmen of each town shall seasonably assess the taxes as provided by law. The selectmen shall pay over to the treasurer of the cooperative district such portion of the sums so raised as may reasonably be required according to a schedule of payments needed for the year as prepared by the treasurer and approved by the cooperative school board, but no such payment shall be greater in percentage to the total sum to be raised by one local district than that of any other local district comprising such cooperative school district.

32 Reference Change. Amend RSA 193:1, I(c) to read as follows:

(c) The relevant school district superintendent has excused a child from attendance because the child is physically or mentally unable to attend school, or has been temporarily excused upon the request of the parent for purposes agreed upon by the school authorities and the parent. Such excused absences shall not be permitted if they cause a serious adverse effect upon the student's educational progress. Students excused for such temporary absences may be claimed as full-time pupils for purposes of calculating state aid under RSA 186-C:18 and ***[RSA 198:27-37] adequate education grants under RSA 198:41.***

33 Reimbursement Anticipation Notes; Version Effective Until July 1, 1999. Amend RSA 198:20-d to read as follows:

198:20-d Reimbursement Anticipation Notes. Notwithstanding any other provision of law to the contrary, a school district may incur debt in anticipation of reimbursement under RSA 186-C:18 ***and under RSA 198:42.*** The governing body, after receiving authorization for borrowing from the legislative body, may elect to recognize the proceeds of the borrowing as revenue for property tax rate setting purposes by providing written notification, prior to September 1, to the commissioner of the department of revenue administration stating the specific amount of borrowing to be recognized as revenue.

34 Reimbursement Anticipation Notes; July 1, 1999 Version. Amend RSA 198:20-d to read as follows:

198:20-d Reimbursement Anticipation Notes. Notwithstanding any other provision of law to the contrary, a school district may incur debt in anticipation of reimbursement under RSA 186-C:18 ***and under RSA 198:42.*** The governing body, after notice and public hearing, may elect to borrow such funds and to recognize the proceeds of the borrowing as revenue for property tax rate setting purposes by providing written ***notification, prior to September 1,*** to the commissioner of the department of revenue administration stating the specific amount of borrowing to be recognized as revenue. Any borrowing under this section shall be exempt from the provisions of RSA 33, relative to debt limits.

35 Alternative Foundation Aid; Calculation of Per Pupil Amount Amended. Amend RSA 198:36 to read as follows:



IV. The foundation aid amount shall be [~~\$4,000~~] **\$4,357** per weighted pupil.

36 Sweepstakes. RSA 284:21-j is repealed and reenacted to read as follows:

284:21-j Establishment. The state treasurer shall credit all moneys received from the sweepstakes commission, and interest received on such moneys, to a special fund from which the treasurer shall pay all expenses of the commission incident to the administration of this subdivision and RSA 287-E. Any balance left in such fund after such expenses are paid shall be deposited in the education trust fund established under RSA 198:39.

37 Transition. As of July 1, 1999, all funds, from any source derived, which would be distributed as foundation aid shall be deposited in the education trust fund under RSA 198:39, including the \$62,000,000 appropriated under 1998, 389:16, II.

38 Payment in Lieu of Taxes. Amend RSA 227-H:17 to read as follows:

227-H:17 Payment in Lieu of Taxes. The commissioner of revenue administration shall adopt rules, pursuant to RSA 541-A, relative to forms for application to the commissioner of revenue administration for payment for lost taxes. [~~In any year in which no state tax is levied,~~] Any town in which national forest lands and land held by the state for operation and development as state forestland, as defined by the department for the purposes of this section, are situated, whether acquired by gift, devise, purchase, or in any other manner, may apply, by its selectmen, to the commissioner of revenue administration on forms provided by the commissioner, annually before September 1, for the payment of an amount not exceeding the taxes for all purposes which such town might have received from taxes on such lands in such year had such lands been taxable. In the event that the amount appropriated in any biennium shall be insufficient for the purposes under this section, then the towns entitled to benefits under this section shall be reimbursed proportionately, unless otherwise subsequently ordered by the legislature.

39 Special Transition Rules. The following special transition rules shall apply to the implementation of the uniform education property tax established by sections 4-41 of this act in the first fiscal year following enactment:

I. "Total equalized value" as defined in RSA 21-J:3, XIII shall be based upon the amounts reported for the 1997 tax year as determined by the commissioner of revenue administration pursuant to RSA 21-J:3, XIII.

II. For the school year 1999/2000, the adequate education grant determined in RSA 198:41 shall be distributed to each municipality's school district or districts from the education trust fund in 4 payments as follows:

(a) On July 1, 1999, and September 1, 1999, 1/8 the total adequate education grant;

(b) On January 1, 2000, and April 1, 2000, 3/8 the total adequate education grant. The commissioner of revenue administration shall certify the amount of each grant to the state treasurer and direct the payment thereof to the municipality's school district or districts. When a payment of a grant is made to a school district, the municipality on whose behalf the payment is made, shall receive notification from the state treasurer of the amount of the payment made to its school district or districts..

III. Notwithstanding any other provision of law, the commissioner of revenue administration, for the April 1, 1999 tax year, shall issue the warrants required by RSA 76:8 on or before 30 days after the effective date of this act.

IV. Notwithstanding any other provision of law, the commissioner of revenue administration shall determine the amount of the adequate education grant for each municipality pursuant to RSA 198:41 for the 1999/2000 school year on or before 30 days after the effective date of this act.

V. For the property tax year ending March 31, 2000, municipalities which have adopted semi-annual collection of taxes shall assess the semi-annual property taxes in accordance with the provisions of RSA 76:15-a.

VI. For the property tax ending March 31, 2000, notwithstanding the provisions of RSA 76:11-a, I, the governing body of any municipality may choose to combine the local and state education property tax rates on the tax bill.

VII. Notwithstanding the provisions of RSA 80:52-a, any overpayment of property tax resulting from the implementation of this act for the tax year ending March 31, 2000 may, at the option of the governing body, be refunded to the property owner or carried forward as a credit toward the amount of taxes assessed against said property for the tax year ending March 31, 2001. Any amounts carried forward shall accrue interest at the rate prescribed in RSA 76:17-a.

VIII. For the school year ending June 30, 2000, adequate education grant moneys received by a school district pursuant to RSA 198:42 shall not be considered unanticipated funds under RSA 198:20-b. School districts may appropriate additional sums for the school year ending June 30, 2000 in accordance with the provisions of 1999, 2.

40 Severability. If any provision of this uniform education property tax enacted in sections 4-41 of this act or the application thereof to any person or circumstance is deemed invalid, the invalidity does not affect the other provisions or applications of this act which can be given effect without the invalid provisions or applications and to this end the provisions of this act are severable.

41 Repeal. The following are repealed:

I. RSA 78:20, relative to the applicability of the tobacco tax.

II. RSA 78-B:10-a, relative to the real estate transfer questionnaire.

III. RSA 21-J:3, XXIII, relative to the commissioner of revenue administration's duty to determine local per capita income for purposes of foundation aid.

IV. RSA 21-J:13, XI, relative to the form and content of the real estate transfer questionnaire.

V. RSA 198:1-3, relative to required annual district property taxes.

VI. RSA 198:15-i - RSA 198:15-q, relative to kindergarten incentive program, kindergarten aid and alternative kindergarten programs.

VII. 1998, 389:13-14 relative to prospective amendments to district foundation aid.

42 Business Profits Tax; Rate Increased. Amend RSA 77-A:2 to read as follows:

77-A:2 Imposition of Tax. A tax is imposed at the rate of ~~[7]~~ 8 percent upon the taxable business profits of every business organization.

43 Business Enterprise Tax; Rate Increased; Super Majority to Increase Tax Deleted. Amend RSA 77-E:2 to read as follows:

77-E:2 Imposition of Tax. A tax is imposed at the rate of ~~[1/4]~~ 1/2 of one percent upon the taxable enterprise value tax base of every business enterprise. ~~[A 2/3 majority of those present and voting of each house of the general court shall be necessary to increase the tax rate under this section.]~~

44 Definitions; Meals and Rooms Tax; Operator. RSA 78-A:3, IV is repealed and reenacted to read as follows:

IV. "Operator" means any person operating a hotel, charging for a taxable meal, or receiving gross rental receipts, whether as owner or proprietor or lessee, sublessee, mortgagee, licensee, or otherwise.

45 New Paragraphs; Meals and Rooms Tax; Motor Vehicle Rental; Definitions. Amend RSA 78-A:3 by inserting after paragraph XIII the following new paragraphs:

XIV. "Motor vehicle" means a self-propelled vehicle designed to transport persons or property on a public highway, including a van or jeep. The term does not include the following:

- (a) A device moved only by human power;
- (b) A device used exclusively on stationary rails or tracks;
- (c) Road-building machinery; or
- (d) A mobile office.

XV. "Rental agreement" means an agreement by the owner of a motor vehicle to provide, for not longer than 180 days, the exclusive use of that motor vehicle to another for consideration.

XVI. "Gross rental receipts" means value received or promised as consideration to the owner of a motor vehicle for rental of the vehicle, but does not include:

- (a) Separately stated charges for insurance;
- (b) Charges for damages to the motor vehicle occurring during the rental agreement period;
- (c) Separately stated charges for motor fuel sold by the owner of the motor vehicle.

XVII. "Owner of a motor vehicle" means a person named in the certificate of title as the owner of the vehicle or a person who has the exclusive use of a motor vehicle by reason of rental and holds the vehicle for re-rental.

XVIII. "Department" means the department of revenue administration.

XIX. "Renter" means any person who, for consideration paid to another, is provided a vehicle under a rental agreement.

46 Meals and Rooms Tax; Licenses Required; Penalty. Amend RSA 78-A:4 to read as follows:

78-A:4 Licenses Required; Penalty.

I. Each operator shall register with the department the name and address of each place of business within the state where ~~he~~ *it* operates a hotel ~~or~~, sells taxable meals, *or rents motor vehicles*. The operator shall pay \$5 for each registration, upon receipt of which the department shall issue a license for each place in such form as it determines, attesting that the registration has been made. The license expires on June 30 in each odd-numbered year unless sooner revoked or suspended by the department. The license shall be conspicuously posted in a public area upon the premises to which it relates.

II. No person shall engage in serving taxable meals ~~or~~, renting rooms, *or renting motor vehicles* without first obtaining the license required by this section. The license is nonassignable and cannot be transferred. Any person who fails to register or obtain a license as provided in this section shall be subject to the penalty provisions of RSA 21-J:39.

47 New Paragraph; Tax Imposed on Motor Vehicle Rentals. Amend RSA 78-A:6 by inserting after paragraph II the following new paragraph:

II-a. A tax of 8 percent is imposed upon the gross rental receipts of each rental.

48 Meals and Rooms Tax; Collection of Tax. Amend RSA 78-A:7, I to read as follows:



I. The operator shall either state the amount of the tax to each occupant ~~or~~, purchaser of a meal, *or renter*, or state that the tax is included in the price of the occupancy ~~or~~, meal *or gross rental receipts received*. The operator shall demand and collect the tax from the occupant ~~or~~, purchaser, *or renter*. The occupant ~~or~~, purchaser, *or renter* shall pay the tax to the operator. If the tax is included in the price of the meal ~~or~~, occupancy, *or gross rental receipts received*, upon request the operator shall state to the purchaser ~~or~~, occupant, *or renter* the amount of the tax.

49 Meals and Rooms Tax; Collection of Tax. Amend RSA 78-A:7, IV to read as follows:

IV. In lieu of keeping detailed records of taxes collected, and in lieu of payment of the taxes collected under this chapter, an operator may, in writing, elect to compute the amount of taxes due at [7] *8* percent of the total taxable rent ~~or~~, charge for meals, *or gross rental receipts* received by ~~him~~ *it*, or both, exclusive of the taxes collected on such rents ~~and~~, charges, *and gross rental receipts*. If this election is made, the operator may not change the method of computing taxes without the written consent of the department. Any balance of the tax remaining in possession of the operator may be retained by ~~him~~ *it*.

50 Tobacco Settlement Funds. Beginning with the fiscal year ending June 30, 1999, \$11,000,000 of funds received each fiscal year by the state of New Hampshire as a result of the settlement in 1998 of litigation against tobacco companies shall be deposited in the education trust fund established in RSA 198:39. The governor is authorized to draw a warrant for said sums out of funds received by the state from settlement of the tobacco litigation.

#### 51 Position Established; Appropriations.

I. To carry out the financial and educational reporting requirements of this act, there are hereby established within the department of education 6 full-time permanent positions as follows:

- (a) One systems development specialist IV, labor grade 25.
- (b) One audit administrator, unclassified group L.
- (c) Three auditors, labor grade 23.
- (d) One administrative assistant, labor grade 15.

II. The sum of \$600,000 is hereby appropriated to the department of education for the biennium ending June 30, 2001, to fund the positions created in paragraph I, including salary, benefits, rent, supplies, and travel. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

III. To carry out the administrative requirements of this act, there is hereby established within the department of revenue administration 2 full-time permanent positions of systems development specialist IV, labor grade 25, and a systems development specialist III, labor grade 22.

IV. The sum of \$2,700,000 for the biennium ending June 30, 2001, is hereby appropriated to the department of revenue administration to fund the costs necessary to implement this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

V. The sum of \$100,000 for the biennium ending June 30, 2001, is hereby appropriated to the department of education to fund the costs necessary to upgrade school districts' computer systems to carry out the reporting responsibilities of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

VI. The sum of \$4,220,000 for the fiscal year ending June 30, 2000 is hereby appropriated from the education trust fund created under RSA 198:39 to the department of revenue administration to reimburse municipalities for the increased administrative costs necessary to carry out the financial purpose of this act in accordance with part I, article 28-a of the New Hampshire constitution. The amount to be distributed to each municipality shall be determined according to the proportion of state property tax assessed by such municipality to the total state property tax assessed. Such amount shall be distributed on or before September 30, 1999.

#### 52 Tax Equity and Efficiency Commission.

I. As new taxes are proposed to replace the interim funding proposed in this act for funding public education in accordance with the supreme court's Claremont II decision, it is important that a review of the tax structure and policy of the state of New Hampshire be completed to insure a fair, proportional, responsible, efficient, and uncomplicated tax structure. Therefore the general court hereby establishes a tax equity and efficiency commission to undertake a comprehensive review of all taxes currently imposed on the citizens of New Hampshire, to consider the effect of all new taxes and revenue sources proposed, and to recommend adjustments to or repeal of certain taxes which may unfairly burden certain segments of the citizenry.

II.(a) There is established a tax equity and efficiency commission. The members of the commission shall be as follows:

(1) Three house members, no more than 2 of whom shall be from the same political party, appointed by the speaker of the house.

(2) Three senators, no more than 2 of whom shall be from the same political party, appointed by the senate president.

(3) Three public members, appointed by the governor.

(4) Three members of the public, appointed by the president of the senate.

(5) Three members of the public appointed by the speaker of the house.

(6) The commissioner of the department of revenue administration, or designee.

(7) The commissioner of the department of education, or designee.

(8) The state treasurer, or designee.

(b) Committee members designated in subparagraph II(a)(4)-(8) shall be nonvoting members.

(c) Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

#### III. The commission shall:

(a) Review each state and local tax paid by citizens of New Hampshire, with regard to who pays each tax, its effect on certain segments of the population, its effects on the economy, jobs, family and community, and whether it duplicates other taxes.

(b) Review each tax or revenue source, including but not limited to those proposed in the 1999 and 200 legislative session, under the same criteria as required by paragraph I for review of existing taxes.

(c) Make recommendations on repealing or adjusting existing taxes, and the creation of new taxes or revenue sources to fund the state obligation.

(d) Review all state grants and revenue sharing programs to determine if any can be supported by the local tax or substituted for the school tax portion if the state absorbs the responsibility for funding public education, grades K-12.

(e) Make recommendations for a complete list of taxes or other revenue sources which establish a new tax policy for this state.

IV. The members of the commission shall elect a chairperson, vice-chairperson, and clerk from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 30 days of the effective date of this section.

V. Reports. The commission shall submit interim reports of its findings and recommendations to the speaker of the house, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before December 1, 1999 and April 1, 2000. The commission shall submit its final report and any recommendations for proposed legislation to the senate president, the speaker of the house, the senate clerk, the house clerk, the governor, and state library on or before December 1, 2000.

53 Appropriation. The sum of \$500,000 is hereby appropriated to the tax equity and efficiency commission established in section 52 of this act for the biennium ending June 30, 2001, for purposes of paying costs associated with its study and the hiring of consultants to provide analysis of all proposed and current state revenue sources. The governor is authorized to draw a warrant for said sum out of any moneys in the treasury not otherwise appropriated.

54 Severability. If any provision of this act or the application thereof to any person or circumstance is deemed invalid, the invalidity does not affect the other provisions or applications of the act which can be given effect without the invalid provisions or applications and to this end the provisions of this act are severable.

55 Applicability. Notwithstanding the provisions of section 56 as inserted by this act, effective on June 30, 2001, the original provisions of the Revised Statutes Annotated affected by section 56 of this act shall be hereby reenacted as they were in effect on the day before this act became effective. Such reenactment shall not affect any other amendments to any statutory provisions adopted in any other act of the legislature which becomes law.

56 Repeal. Sections 2-3, 11, 18, 20, 39-40, and 42-50 of this act are hereby repealed.

57 Effective Date.

I. Sections 42-43 of this act shall take effect upon its passage, and shall apply to returns and taxes and reports due on account of taxable periods beginning on or after January 1, 1999.

II. Sections 44-49 of this act shall take effect July 1, 1999.

III. Section 34 of this act shall take effect July 1, 1999 at 12:01 a.m.

IV. Section 56 of this act shall take effect June 30, 2001.

V. The remainder of this act shall take effect upon its passage and shall apply to property taxes due for the tax year ending March 31, 2000.

**1999-0943s**

#### AMENDED ANALYSIS

I. This bill:

(a) Increases the rate of the tobacco tax by 10 cents.

(b) Establishes a uniform education property tax to provide funding for an adequate education.

(c) Increases the rate of the business profits tax and the business enterprise tax.

(d) Adds a tax on rental of motor vehicles.



(e) Designates \$11,000,000 annually of tobacco settlement funds received by the state for education funding.

(f) Makes appropriations to the department of education and the department of revenue administration for the purposes of the bill.

II. This bill:

(a) Establishes an educational adequacy and education financing reform commission.

(b) Establishes a system for calculating and disbursing state grants for educational adequacy.

(c) Appropriates funds to the commission for the purposes of this bill.

(d) Provides for certain catastrophic special education payments.

III. The bill also establishes a tax equity and efficiency commission and makes an appropriation to the commission.

**Recess.**

**Out of Recess.**

SENATOR F. KING: I might say that if Doctor Squires wants to see mourning, maybe he should just watch me in a little while. Today is "D-day" for the Claremont issue. Decision day. We now know that it is possible to make a good bottle of Jack Daniel's Whiskey in less time than you can pass an important piece of legislation, and we are not through. There is legislation in the House working its way through the system and we will be working on legislation in the Senate, and there will be a Committee of Conference, and then the deal will have to be made with the governor. However, good legislation like good whiskey can turn sour if we short stop the progress before the fermentation process is over. How this legislature decides this issue may result in a good product or a bad product. We have all made our own important speeches about the need to provide for quality education for our children and our grandchildren, and we were 100 percent right in those speeches. This should be our number one priority this year. What we do today will also impact the business and citizens of all 250 plus communities in this state, those communities which we all represent. However, for good or for bad, we do come from 24 different districts and each with individual differences. What is good for the North Country may not be good for the seacoast. An economic incentive for the lakes region may be different for the golden triangle communities. Our challenge is to find a plan that helps, but does not hurt all of the communities in the state and not just in our own district. Mr. President, I remember when I was first in the Senate, one day you got up to make a speech and I looked over, and you took off your jacket and then you took off your tie, and then you took your shirt off. I thought to myself, we have our own Gypsy Rose Lee here in the Senate, I didn't know that. But what you were doing, was that under your shirt, you have a T-shirt from, I believe, the town of Winchester, and you made an excellent speech that day. I don't remember the subject, but it might have been on fully funding the Augenblick Formula. I believe that I voted with you that day. I am not sure whether you convinced me, but I think that I did do that. I have always remembered that speech. I too have a special T-shirt, but you can rest, I am not going to take off my clothes, I just want to make that clear. A friend of mine gave this T-shirt to me when I first announced that I was going to run for the Senate. On this T-shirt it says, "Politicians think of the next election, statesmen think of the next generation." I don't pretend to be a statesman, and I guess that I probably am, by definition, a politician. But I have tried to follow that slogan as I deal with the issues of the Senate.

I believe that we all do that. I further believe that we have become statesmen as we have worked our way for 14 months through the issue of how to deal with the Claremont issue. We should be very proud of our work. However, I wonder if we thought sufficiently of the next generation of taxpayers or businesses, and how our decisions are going to affect their ability to fund the long range programs which the state must provide for all of those in the next generation. We must be sure that our decisions on funding are the right ones. I believe that this amendment that we are offering today, which is designed to be an interim plan, will allow our schools adequate funding, and it will allow the legislature to continue to develop the final answers which are needed before a final plan can be put into place. I believe that the fermentation process is not over. The amendment will not disrupt our business community, in which the state is such a heavy dependency for its revenues. It is fair and just for all of the regions of this state and not just certain ones. I have made an adjustment, as you will see since yesterday, to recognize the additional revenues, which are available, by starting the plan in fiscal year 2000. My original intent as we worked on this legislation was to have the process start in 2001. The school fiscal year which will start in July 2000. The school year 2000 starts in July this year. I believe that the other plans, the plan that we actually have on the table, and other plans do the right thing. The money starts to flow starting in July during the current school year. By doing that, the \$62 million which we raised in our last budget out of \$31 million in surplus in each of the two years, is now available for additional revenue. What I have done is that I have used \$5 million of that for each year to provide money for administration. I have placed \$26 million in the adequacy formula. The new spreadsheets that have been passed out indicate how the money will flow with the extra \$26 million. I have to tell you that I was here early this morning and I started to look at the numbers that are part of the House plan. The new plan that is being developed over in the House, and I looked at all of the numbers, and I don't have any idea of the number of spreadsheets that we have looked at, and I have no idea how many individuals have helped to prepare those spreadsheets. I have tried to use the Legislative Budget office for my source, but when I look at the numbers in the House plan, it seems to be substantially less revenue going to the towns than even in this plan that I am promoting, and I guess that I don't understand that. We need to take a look at that and perhaps we will have a chance to do that. The issue that I have with the plans that are trying to spend large sums of money, more than this plan, the money over and above this plan. It is that we can't get there from here without a major source of new revenue. The danger of taking money from existing budgets or even taking money that we might need for future budgets and even the budget this year, I think, is the wrong thing to do. We simply cannot put our budget process in general at risk because we don't have the courage to raise the amount of money that we want to spend on education. We know what the sources are and we know that we have all voted on those. I voted right along with most of the people in this room. We have voted for an income tax, I thought that bill as it was put together and went back to the House was a good bill. I thought that it eliminated some taxes, and it raised some taxes, and you all know what that bill was. Then we voted on gambling, I voted for gambling. I have no problem with that. That met the same fate in the House. We had a vote here that day on the principle of a sales tax. That didn't make it. So here we are left with a statewide property tax. A statewide property tax is going to be part of the solution of whatever we come up with be-

cause it raises a lot of money and we can use that. But when you stretch the statewide property tax too much, people start to hurt, so it leaves us with a void. That void is \$150-\$200 million, and that is when we start to really hurt people because we start to pick and choose. However, we raise that money, somebody gets hurt somewhere in this state. The right thing to do...if we were making a business decision for a corporation that we worked for or a business that we owned, we would go forward slowly in solving the problem. We would take care of the immediate needs of our business, even if it was growing, but we would also make sure that when we got to the final plan that we would have a chance to survive into the future. That is where I disagree with the bills that we are dealing with. I think that we are putting at risk, then perhaps we are putting at risk the economic future of this state. We all know how dependent this state is on business income, probably more so than any other state, and we have been successful because of that. We have attracted businesses to this state and they have made their investments here. Our statewide per capita income and our degree of poverty. All of the statistics that tell us that we have a great state are in our favor. Whether we believe in broad base taxes or not, the fact is that our tax climate has been good over time to our citizens. It needs to change because we have short-changed our towns and schools and we have to solve that problem, there is no doubt about it. I said yesterday, and I will say it again today, the five towns that brought this lawsuit, I commend them for that. I believe that the Supreme Court Justices, based on my limited knowledge, answered the question correctly. When the first lawsuit started in this state, I was chairman of the school board in Colebrook. I remember that discussion vaguely. That is how long that this has been going on. So we need to deal with it, but we need to deal with it in a way that we do not put in jeopardy the future of this state and its economy. Maybe we are not, but I am not sure, but because I am not sure, I think that this is the choice that we should make. I thank you very much for the time, Mr. President.

SENATOR KRUEGER: What is good for the state of New Hampshire? I think that two days ago with good faith, people from both sides of the aisle looked hard at a plan that was very similar to this plan, actually, if you really think about it. However, it raised the ire of the people in the state of New Hampshire. Why? Because maybe as Senator King has just said, it was not good, it was not good for the state of New Hampshire. Since Senator King's plan has been out, I need to tell everyone in this room that it has received the support of the Manchester Chamber of Commerce, the Nashua Chamber of Commerce and although the Portsmouth Chamber of Commerce just looked at the plan this morning, the President informed us that they were at this point, enthusiastic was the word that she used. That makes me feel good, why? Because in this plan, not on the sidebar, not in another bill that may come some day, is the \$20 million to help those donor towns. Unless we help those donor towns, the poor people in those donor towns will suffer. Of course I don't like the statewide property tax. The economists in the state don't like the statewide property tax. Seven dollars per thousand. That doesn't particularly hit second homes. We need second homes, we need people that own second homes here in this state. Many of the people in the state own second homes in this state. No capital gains tax, huge difference in this plan, huge difference is the capital gains. There are \$739,000,000 real dollars, \$11 millions from the tobacco settlement when we hear from day to day that it may go down, it may go up, we may get this...I am



uncomfortable with \$30 million which was earmarked out of the plan two days ago. I think that \$11 million is realistic. I worry that rental cars won't bring in that money. We have heard that it won't. It is in everyone's plan. I am not sure about that. Is this real? Are these dollars real? What is more extraordinary, and I am hoping that someone in this room will compare the numbers, but I know that representing the towns that I represent, when I look at this and when I look at the Speaker's plan, when I look at other plans that have come through here, I can't tell you how thrilled I think the people in Manchester will be when they get \$48.7 million, and we haven't hurt as many people as the plan that came out of there two days ago. How in good conscience can you be thinking about not passing this? All I have asked, and I am sure you are in total shock that I am standing here supporting a plan with this kind of money attached to it, all that I have asked each Senator in this room to do was to look at the numbers with the plans that are before us. Some plans, the spreadsheets are not done, these are done. Look at your own towns. How could you ever vote for less? If we are going to go down this horrific road, and I don't believe a statewide property tax is a terrible road, then why not do it right? Why not do it so that the businesses, who in fact, ultimately help support the people in this state, hire the people in this state, are generous to the charities in this state, are comfortable with this, doesn't that tell everyone in this room something? To turn **TAPE CHANGE** and then expect the House, who it seems to me would be controlling the debate at that point, would be bringing in a plan that quite frankly, if you were to go one, two and three, in my mind, would certainly get the number three as which plan is the best. We may sit here today and we may say that this is number one, that is number one, it doesn't matter. Why wouldn't we ever want this bill to go forward? How could we not let this bill go forward? It doesn't hurt business as much as the other two plans. If we hurt business, ultimately, and I have said this before, we will hurt the children of the state of New Hampshire, I guarantee it. Please rethink your position. I know where the votes are, I know that we are short one. Let's not be silly, we are short one vote. Look at the numbers. Take a minute and look at the numbers. That is all that I ask. Forget where the plan comes from. From my perspective, from the people on the other side of the aisle, you would not have been able to get your plan forward unless Republicans had supported it because they believed in it. My sense, I think that there are people on the other side of the aisle that believe in it. In fact, I know that there are. I would hate to think that they are afraid to vote for it for whatever reason. We have been asked over and over and over and over again to do the right thing. Have you ever thought that this could be it? Thank you.

SENATOR HOLLINGWORTH: Senator King, I am looking at page 17 and I am sorry that I haven't had a chance to see this before, and I apologize for that. On line 19 the severability, what I was looking for in here was that in the event that the mechanism for rebates to the communities, and I guess the word isn't rebates, but some kind of adjustment...if that should not be held constitutional, that we would have to come back and address this whole issue, because if there were a nonseverability, if there isn't a nonseverability I am afraid that the \$7 per thousand would hold. I guess that my question is that I don't believe that section 40 does that. Senator King, we can wait if you would like, and I think that there will be a recess before we vote, and I can ask you then.

SENATOR F. KING: I know that you had an issue with the severability clause and I thought that we met your concerns, maybe we haven't.

SENATOR HOLLINGWORTH: Unfortunately, I think that there is a little confusion about that.

SENATOR F. KING: I am sorry about that.

SENATOR D'ALLESANDRO: Senator King, I have two questions about the term "betterment funds." You have used that term in two sections of the little spreadsheet that you gave us. "Current, general and betterment funds." Where are these betterment funds?

SENATOR F. KING: Last year in the budget, we had, as I said, \$62 million, and that is the term that I am using. I am using the term that was given to me by the LBA office. Those are the betterment funds that I am speaking of. I don't know if you have seen the House version of the budget, they are using \$31 million in each of the two years. That is what the betterment funds are.

SENATOR D'ALLESANDRO: Then are they the \$62 million that was in HB 1075 that is encumbered?

SENATOR F. KING: Yes, Senator.

SENATOR COHEN: Yes, I rise to address a point that my colleague and good friend, Senator Krueger, brought up about the Portsmouth Chamber of Commerce. I spoke to them after she spoke to them, and what they were enthusiastic about is the lesser figure. The people in Portsmouth, the small businesses in Portsmouth, I will tell you, who are just like small businesses like anywhere in the state of New Hampshire. I have spoken to them with the \$10 statewide property tax rate. It is no exaggeration to say that they are in panic. It is a very scary situation for them, right so, I think. The point is, that what we need to do is bring that rate down substantially. That is what their interest is. We talked earlier about this whole issue being about education. A concern that they have, the Chamber of Commerce has and that I have, is the level of adequacy. We need to have a significantly higher, a realistic level of adequacy. This is about education. It is about an adequate level of funding for education. This level is not addressing the question of fairer funding of a decent level of adequacy. So what we need to do...it is not this particular bill necessarily that the chamber initially had some enthusiasm about, and they have officially taken no position. I want to get that on the record. They do not have a position on this. I am dedicated to working to get that \$10 figure down. I do not believe that this is the vehicle in which to do that.

SENATOR F. KING: Senator Cohen, I agree with you. I agree with what you said. Would you explain to me how you could bring down the statewide property tax and increase adequacy? That is the problem. How do we do that? Show me how to do that and I will be with you.

SENATOR COHEN: There have been a number of issues addressed here. I think that we all...most of us recognized the best revenue source is one that for some reason we are not able to talk about and that is, of course, the income tax; however, recognizing that there is a stumbling block to that, there are still other sources of revenue that we can talk about, and I believe that we should talk about, and we will talk about.

SENATOR F. KING: Senator Cohen, since I believe that today is "D-day" the day that we are going to make this decision, and with the Senate President's permission, I would ask you to tell me where those monies are. Tell me how to do that. Tell us how to do that. How do we increase adequacy, cut down the property tax and make the bill balance? Please tell me how to do that.

SENATOR COHEN: I thought "D-day" was April 1 to be perfectly honest. But I guess we have seemed to pass that last time that I checked; however, there are a number of ways that we can look at that. Capital gains is certainly something that we can look at. There is a lot that can be addressed here. I believe that we are all aware of that. Thank you.

SENATOR HOLLINGWORTH: As you know, I am extremely concerned about a statewide property tax. What is troubling to me is that we find ourselves come full circle. Last year when I was running, I went to my selectmen's office, and voters, and spoke at many forums and spoke to hundreds and hundreds of people. The topic that was discussed by everyone, even my districts that are receiving towns, was how they were opposed to a statewide property tax. They said that it was not a fair thing. Every town whether they received money or not, said that they didn't want what was happening across the border in our neighboring states, that is an unfair thing to happen. Towns invested their money and hired firms and experts and the study came back and everybody in this body, well pretty much everyone on this body, read that study. Most of you agreed that the study was right. The statewide property tax was not the thing to do in New Hampshire. Last week when the Senate's version, which is now sitting on the table, HB 112, happened, I called a few of my selectmen and they said, "But Senator Hollingworth, you promised us." And I did. I did. I told my people "don't worry, there won't be a statewide property tax, that is not popular, there is no way that the Senate is going to take and do that to the state, that they will not pass a statewide property tax. After all, we are the majority, we are the Democrats, and we worry about people and businesses, and we want fairness, and besides that, we have the governor in the corner office and I am the chairman of Finance. I am never going to allow a statewide property tax to go through." I said that totally believing everything that came out of my mouth was true. Well here we stand, we have come full circle. We are standing here today with HB 112 that has a five and ten statewide property tax. People can say that businesses can afford to pay. I got news for you. Those businesses that you are giving a \$10 across the board property tax are in competition with other businesses, and they are in towns, and some of them struggle real hard to take and make their payments right now. Most of them are in so-called property rich towns. A lot of them help our economy. They are the second largest producers of our revenue stream, rooms and meals. Those small businesses, the businesses, small and large, but primarily those small ones, are the backbone of our industry in this state. We are not a state of big businesses, we are a state of small businesses. These people, I am telling you, are pretty shocked. They look at me and they say, "how can this be happening? I mean the Democratic party is always looking out for small businesses, and small people, and understanding, and they are looking out for business. How can this be happening?" I have to look at them and say that I do not know. I don't know how this can be happening. You know, it is one of those times in my life...this has been a very difficult year. It has been a difficult year for everyone, but the last few days has probably been the most difficult. I feel like I am a person without a country. I said that earlier, and that is just exactly what I feel like. I asked other Senators to reconsider to think about what we are doing. One business in a district of mine is going to face a 24 percent increase. It happens to be in a little town, and he happens to be in the apple growing industry. He has a couple of stores, one in Seabrook and one in Hampton Falls, plus his orchard. Now he is going to be paying an increase on his



orchard to business, an increase on his store, a 24 percent increase under the present legislation, and then in Seabrook he is going to pay a 97 percent increase. There is no way in his competitive business that he is going to be able to make that up. I represent a district in Hampton that has a lot of small cottages and they rent rooms. They have managed to keep their business there and they have 20 to 30 rooms. They are going to face a 19 percent increase, and they can't recoup it this year because their rates have already gone out. There is no way that they can say, all right, we will pass it on. Because everyone has been saying that businesses can pass it on, businesses don't pay taxes, people pay taxes. Folks, those people will pay the taxes. Now I have this terrible choice. I have Senator King's and the one that is sitting on the table. People say, "how can you support a low adequacy bill?" I can't. I want a lot more than that, everybody knows that in this body. But I also know that I can't, I can't do this to the people of my district. So at least in Senator King's bill, there is a mechanism for communities that are donor towns, and it is in the bill to receive some money back. Do I like the \$7 per thousand? No. But at least in his, there is a mechanism for those people who happened to be the so-called donor towns, to receive some rebate or betterment. I understand this to be an interim plan. I think that in the bill, Senator King, correct me if I am wrong, do I see a 43 percent adequacy in your bill?

SENATOR F. KING: I believe that is what it works out to, I am not sure.

SENATOR HOLLINGWORTH: I think that it is 43 plus percent. So I know that is where you intend to be. It is not much different than the other pieces that are sitting on the table or the other pieces that are being proposed. What I wanted to see was a nonseverability clause that if this bill failed, I have some language here, but I am afraid that on looking at it, it addresses HB 117 that we believe will be coming to us later today. This is what I had hoped would be in this version "nonseverability in the intent of this legislation is that an act to be considered a unit and its provisions inseparable in any provision that is enacted is declared unconstitutional, the entire act and all of its provisions, should be invalid." The idea is that if for some reason, and I think that the House has the same kind of provision in theirs, that they are going to have some kind of betterment for the communities if they end up being donor towns. The one that is sitting on the table does not have any adjustment for that. Now I hear that it may be unconstitutional and so that is why I wanted that in there. I want to be sure when I vote for something that we are not going down an unconstitutional, road again. We all know, I mean we polled each other, we all know that there was one thing that we could all support, well the majority of us could support, in this body, and the majority on the other side of the wall. Something that was fair and equitable and provided an adequate education for all of our children, but we also know that we are standing here today, and many of you didn't vote it, but the income tax passed, and it was the only way to go to provide an adequate education and fair taxation to the people of this state. The only way that we can get there is if the House can pass it and there could be an override, which many of us are afraid is highly unlikely. So I stand here today with a tough decision. If Senator King is inclined to accept my nonseverability part, I probably would have to take and say that that gives me more protection. I know that people keep saying that we will be going to a Committee of Conference and don't worry, when we get to the Committee of Conference, we can correct these things. Well I have been in this body 17 years, and I can tell you that I don't know how many times that I have got burnt wait-

ing for good news to come back from a Committee of Conference. I am sure that there have been a lot of you, like me. I am sure that many of you, who have served time in this body have seen... "you have to take it, because if you don't, there is nothing else. You have to agree to the Committee of Conference, this is the best that we can do." It has taken 16 years to answer the Claremont suit, 15, 16 months trying to resolve it in funding, and is this the best that we can do? Is this the best that we can do?

SENATOR F. KING: Senator Hollingworth, you know that this bill does provide \$20 million in mitigation circuit breaker to reduce the impact on the donor towns, which actually will still have a \$7 million amount to be distributed over the towns, which substantially reduces it. But the other thing, did you know that there is also a provision in this bill that effectively will reduce the \$7 tax rate to the \$5.75 tax rate that we have already passed in the Senate by triggering where the donor towns start to make their donation, that is in this bill?

SENATOR HOLLINGWORTH: That is where they fund at state average and then it is remitted back what is their average. Yes I do recognize that. That is the place that I think that we need to make sure that if that should be declared unconstitutional, that there would be...all of it, the act would not be moved forward.

SENATOR F. KING: I must tell you that I misunderstood what we were talking about yesterday, I think that the bill that we were using as a draft has a severability clause in it, and we took it out because I thought that is the way that we were supposed to go. Matter of fact, it had two in it.

SENATOR HOLLINGWORTH: It is an nonseverability.

SENATOR F. KING: That bill had what you wanted, and we took it out because I thought that is what you wanted. I am from up north, I don't know much about that business, we don't separate up there.

SENATOR HOLLINGWORTH: I am sorry. Thank you.

SENATOR MCCARLEY: Is the goal with whatever the two of you are in agreement about, that if something is unconstitutional about this, that everything is gone, and we are doing nothing about adequate education? I just need clarification on that.

SENATOR F. KING: I think that Senator Hollingworth's concern is that if the issue of the mitigation money were to be found unconstitutional, she then has the impact of the concern about the statewide property tax. So the answer to your question is yes.

SENATOR MCCARLEY: Ok. Thank you.

SENATOR LARSEN: Senator King, whenever we have done calculations on a BPT increase at 8 percent, it has not brought in \$29 million. The estimate from the Department of Revenue is that a BET at .5 and a BPT at 8 brings 51. Your numbers are far higher than that. Are you then saying, and I cannot find it in the bill, that you're repealing the exemption language?

SENATOR F. KING: No, I am not repealing the exemption language.

SENATOR LARSEN: Where is the revenue coming from?

SENATOR F. KING: I have not had the opportunity to work with all of the people in the state government that have dealt with this, because some of them have been very tied up. So I have been depending on the LBA office for my expert source. The LBA is the one that gave me those

numbers, and I am comfortable with them. I think that the LBA, and my dealings with them last year in the Finance Committee, I found them to be 100 percent accurate. Those are their numbers, and those are the numbers that I am using.

SENATOR LARSEN: I wish to speak to the issue. Those numbers are dramatically higher than anything that the Department of Revenue has even given us from their estimates of revenue from 1998. The combined BET .5 and the BPT at 8 is estimated to bring in 51 by the Department of Revenue. I have trouble understanding how the disparity between those can be so great. I also wanted to speak to the idea that we would have mitigation circuit breaker language, and that is somehow meet constitutional standards. I have talked to the attorney general's office and have talked with a number of lawyers. The greatest question that lies in the mitigation, is the court told us that in recognizing the fundamental right for each child to receive an education in this state and the requirement and the responsibility that the sharing of the burden of paying for education had to be an equal sharing. When you look at the mitigation language, and I did sit down with the proponents of the mitigation language. When you look at that language, the true outcome and question that you need to ask is, is the burden shared equally? Under my understanding and the understanding of the attorneys who spoke with me about the mitigation language, it would not result in an equal sharing across the state by communities and individuals across the state. It would not result in that proportional and equal sharing, and that is why it would be unconstitutional. I believe that we must look at this also in terms of is it going to fund an adequate education? The assumption under this bill is that the adequacy commission report is going to be our standard for adequacy. All of us recall that that adequacy commission reduced their numbers by 25 percent in order to meet a stated goal of not having to raise significant amounts of money to pay for an adequate education. There was an effort by House Finance to come under arbitrary number, and to do that, there was an arbitrary reduction of 25 percent. Every time that anyone has been asked on the commission why was that reduction there, there is no justification, other than it was to meet a bottom line goal. So two of these items in this bill are flawed. There is belief that it is founded on an unconstitutional mitigation suggestion, and also that it would somehow achieve adequacy with an arbitrary reduction of adequate levels of funding by 25 percent. For this reason I think that there is flawed understanding that this might somehow survive the constitutional and court requirements put upon us. I urge you to think about that in making your vote.

SENATOR F. KING: I would like to answer Senator Larsen's question. I, too, am concerned about the issue of whether it is constitutional or not. I, too, was concerned about a previous piece of legislation that we sent to the Supreme Court last year to see whether it was constitutional. I will tell you that I have talked to attorneys, and some of whom have spent a lot of time in the Supreme Court. They feel that both of these issues are constitutional. We could fill this room with attorneys and get at least 50 that would agree. So I am comfortable with that. The adequacy number is a debatable issue because it is a smaller number, but the adequacy issue is entirely separate from the other two issues. I believe, and I have been told that if the legislature chooses to fund a betterment fund for those donor towns, that has nothing to do with adequacy, then that is okay.



I would also say that we have had extensive opinions about whether things are constitutional, or if they weren't, so I don't know who your sources are, but I am not sure that they are all the right ones.

**SENATOR HOLLINGWORTH:** Senator King, we hear that properties should be equal in sharing the burden equally. My question to you is how can equal sharing take place when property in different towns are accessed at a higher and different levels?

**SENATOR F. KING:** My only ability to answer questions, in fact I have a son who is a lawyer, and he is a good son. But I have also been told by attorneys who I have a lot of faith in, and I have worked with, is that the five and ten is very questionable, and probably there are already lawsuits being prepared over that issue. So I think that if you want to talk about constitutionality, then we should talk about all of the issues that we are talking about today. The five and dime that we are talking about in the bill that we took off of the table, I have been told by attorneys, not my son, but by other attorneys who have spent a lot of time in the Supreme Court, that that is very questionable also.

**SENATOR GORDON:** I guess in desperate times, desperate people do desperate things. I am going to rise in support of Senator King's amendment, but tell you that I am not doing it with a whole lot of enthusiasm. I am doing it because I had a choice to make between Senator King's amendment and HB 112 as we adopted it earlier this week. When I have to make that choice, I come down on the side of voting with Senator King. I do it for many of the reasons that have already been expressed here today. The first and foremost, is I think that having two separate property rates on property is unconscionable. I don't know how we can stand up here and say that our true interest here today, and the reason that we can't vote for Senator King's plan, is because we want fair and proportional taxation, and then turn around and support a plan that has two separate houses side by side, exactly identical, and then tax them at two different rates. How do you do that? Tell me? I don't know how you do it. There was some sense in doing it in the Hagar/Below plan when we granted 100 percent exemption, because at least then you could say that person, who is a citizen of New Hampshire, is at least paying some income tax; and therefore, you have to excuse them from paying some property tax. In HB 112, as we passed it on Tuesday, there is no excuse for it. I don't see how anybody could find it constitutional. So Senator King comes in here and says that we are going to apply a property tax across the board at \$7 a thousand. That makes a whole lot more sense to me, and I would support that any day. The other issue that I will raise here is the issue of adequacy and the \$700 million number, as opposed to the \$800 million number. I would rather have an \$800 million number in many ways, if, I thought that the money was going to be distributed in some way that it was going to be improving the quality of education. That is where we all started a year ago, but it isn't. It is just going to be sent out to the districts. I would be willing to have an \$850 million number if I thought that there was some provision in there that was going to require some property tax relief, but there isn't. I mean the fact is, that when we got to the point where we are right now, we are talking about just statewide property tax **TAPE CHANGE**

**SENATOR BELOW:** **TAPE INAUDIBLE** the tax, which is the broadest base so that everyone pays their fair share, and no one is being asked to pay more than their fair share. But it seems as though we lack the will to do that at this time in this state, so we continue with the lousy

choices. I would like to address the question of, is it possibly constitutional to create two classes of property, primary homes/owner occupied and other property? I agree with Senator Gordon, that had a rational basis in HB 109, where the homeowners weren't going to be paying the income tax. But just to address it in any case. I am not sure if it is a good idea or not in this other alternative plan at this point. But in the opinion of the justices from June 10, 1977, the first head note was, "Legislature has broad discretionary powers to classify subjects of taxation and classifications made for just reasons do not violate any provision of state constitution which requires that all subjects of taxation within a given class, be taxed at a uniform rate." Well what would be the reason for distinguishing primary residences? I think that the version of HB 112 that is here today, is to avoid the problem of excessively increasing the property tax burden on homeowners in so-called property rich communities, which are going to see an increase under either bill. In this alternative that we are presented with today does nothing to direct mitigation directly to those homeowners that are going to see an increase at a \$7 rate. In that same opinion, the court went on to say, "It is evident that property used as a principal residence is unlike any other property which a taxpayer may own. Principal residences therefore constitute a reasonable distinct class of property for which the legislature may allow a tax exemption and deduction not allowed for any other property." The version of HB 112 on the table today allows a 50 percent exemption for principal residences that are not provided as other classes of property. Based on precedent, there is clearly an argument that it would be constitutional. Is it the right thing to do? I am not so sure anymore. So where does that leave us? With bad choices. I am sorry.

SENATOR F. KING: Senator Below, would you believe that I think that you have just expressed my thoughts? Would you further believe that this is why this is an interim plan? We are being forced to do something because of the deadline, and there is a deadline, and we have to get our schools back in business, and we have to get our teachers back to work. Would you believe that interim plan would allow that to go forward so that the frustration that you and I have, and Senator Gordon has, and that we all have, can work through the fermentation process so that we have a good product and a bad product? One more question. Do you think that a capital gains tax is a good tax?

SENATOR BELOW: In response to your first question. I think that either of these plans are interim plans. I don't think that any of them solve the problem. I am not sure...I hope that we can step back before we are forced to another vote this afternoon, because I am not sure, looking at the numbers here, which one really is better or worst. The current version provides another \$100 million or so of relief, I mean funding for adequacy. The average effective property tax rate is \$7.50, and here it is \$7. In some communities, many communities, there may be more...because under your amendment today, less money is distributed. The effective property tax rate...the total rate may actually be higher in some communities than it is in the alternative. So it is just not clear to me what the net effect is of either one at the moment. With regard to the capital gains tax. I think that it makes as much sense to tax a capital gains tax and single it out as it does to single out interest and dividends, which is to say that it doesn't really make sense to single it out as a source of income compared to a general broadband income tax. I think that all income should be treated the same. It does happen to be true, with regard to capital gains the vast majority of it is earned by people at a high-in-

come range who now enjoy the least tax burden of anyone in this state as a group. How it applies to individuals? It may well be unfair. But is it any more or less unfair than increasing the property tax in one community versus another? The one thing that can be said, and I don't think that it is a good thing to be said for the property tax, which is, yes, some small businesses suffer under either of these plans depending on if they are in a community where it raises up. But small businesses are already suffering in property poor communities, where they are paying two, three, four or ten times the rate of small businesses that they are competing with in other communities on the same value of property, which again, just goes through the whole problem of being left with bad choices when we have the possibility of making good choices, and really making our tax system just and proportionate, which is not what we are doing today.

SENATOR TROMBLY: Senator Below, do you have your amendment to HB 112 sponsored by Senator King?

SENATOR BELOW: Yes.

SENATOR TROMBLY: Would you reveal the list of sponsors of that for me please, before I ask you a question?

SENATOR BELOW: Well it appears to have all of the eleven Republican members of the Senate.

SENATOR TROMBLY: How many of those sponsors voted for HB 109 when we previously voted on it the first time that it came over from the House?

SENATOR BELOW: The first time, one, as far as I recall.

SENATOR HOLLINGWORTH: Senator Below, I don't know the answer to this, and this isn't a trick question. This is a serious question. If we have some seniors who are now paying interest and dividends on their investments, and that is pretty much what they live on...if they should sell their whatever...to go either into a nursing home or to have more money to live on...under the capital gains, are they also going to be paying interest and dividends and capital gains?

SENATOR BELOW: If their primary residence is exempted, if that is what they are selling. If they are selling other assets, stock for instance, I mean they have already been paying interest and dividends, but they would pay on their capital gains of their other sale of other capital assets.

SENATOR HOLLINGWORTH: Thank you.

SENATOR FRASER: Senator Larsen, your question about the constitutionality notwithstanding...I have heard on a number of different occasions the position on HB 112 as it is now crafted is because we want to go to a Committee of Conference with a position of strength in a high number. I guess that my question to you would be...it is hypothetical of course, but I would like to know beyond that issue which is really a political question, why do you feel that \$739 million does not satisfy the issue of adequacy?

SENATOR LARSEN: I believe that if you just...the simplest way to figure out per pupil how much this bill would be sending out, is to divide it by two. That comes to, as I did it, \$3600 per pupil. We know that the average statewide spending on a child's education is at least \$5500, and so when you offer, as a state level of adequate support, \$3600, you are so far below, what it is the statewide average, that it becomes much more difficult to defend. If you can increase your adequacy number, you obviously



are coming closer in the \$849 to meeting adequate levels of state support, particularly if you weigh those based on free and reduced lunch, and some of the other factors that are in HB 112 as it is on the Senate table. So the defensibility...one of the things that we are here to do, the most important thing that we are here to do, is to try to fund our schools and students at an adequate level. The closer that you can come to at least the statewide average, the closer that you are to adequate. It is as simple as that. Truly the number is not political. I got a postcard today, many of you are getting pink postcards in the mail, and the teacher wrote and said, "Please, do what is right for the kids and take this out of partisan bickering." It is not partisan bickering to ask that the state raise as much as it can to getting to an adequate level of funding for the schools, it is what we need to do, so that if we are challenged in court, we have a defensible level of support for our schools. So that is why it is important that that number be as high as possible.

**SENATOR FRASER:** Senator Larsen, so you agree then that neither bill, HB 112 as it is currently crafted, nor Senator Fred King's proposed amendment, actually addresses the issue of adequacy? House Bill 112 as currently crafted, if I understand your testimony, is closer, but by the same token, it does not in fact address the issue of adequacy?

**SENATOR LARSEN:** The bill that is on the table is closer to adequacy. I believe that we make a big step forward in this state when we begin to recognize that the state will support over \$800 million in education funding. We have been for many, many years, arguing, back when we tried to bring the Augenblick Formula numbers up, we have been at about \$100 million in support for state aid to education over the years and there has been a reluctance to move from that number. We are now seeing that people are willing in this legislature, and it is encouraging, that we will move beyond that number and begin to fund schools adequately. The courts tell us that we must do that, and \$800 million and above level is closer to adequacy than a \$700 million number. It is as simple as that. I believe that we may, in fact in time, that the courts are asking us to go back and find additional funds, because perhaps we aren't at what they believe is adequate funding for education, but I believe that that task will be less difficult if we can raise enough money to begin to support adequate education in this state now. If we have to go back and find additional funds in the future, so be it, and I am sure that we will be back arguing this issue over time.

**SENATOR FRASER:** Thank you, Senator.

**SENATOR F. KING:** Senator Larsen, I don't have my calculator, but I just want to make sure that in answer to Senator Fraser's question, you seemed to indicate that you think that somewhere around 60-65 percent of the cost of education paid for by the state is insufficient?

**SENATOR LARSEN:** I believe that it is a significant step forward for a state that is only ever paid 8 percent of the cost of education.

**SENATOR F. KING:** I know, but we are talking about "D-day" going forward. Do you think that 60 to 65 percent is not enough?

**SENATOR LARSEN:** There have been constitutional and Claremont scholars who believe that truly to respond to Claremont, that we would have to raise the \$1.4 billion that we currently spend, because it is now a state responsibility to pay for education. So I think that there will be lawyers arguing on any side. I believe that it is a significant step for the state to begin to get to the 60-70-80 percent support level.

SENATOR F. KING: Could I have my question answered, Senator Larsen? The question was...you apparently have said that you think that 60 to 65 percent is insufficient state money for education. You think that we should pay 100 percent then?

SENATOR LARSEN: No, I don't believe that we should pay 100 percent.

SENATOR F. KING: But you think that 60 to 65 percent is not enough?

SENATOR LARSEN: I question what is defensible when you go back to the court, and it is questioned what is the level that meets what the court told us to do as a floor, and that the floor has to be adequate no matter where that child lives. If 65 percent presents a floor that you can support education from, then they need to defend that, but I think that you will find that the difference between 65 and 100 percent is not the frills of the schools. I think that if you get into the 70 percent or 80 percent range, that perhaps schools have 20 percent leeway in the way that they are spending, but when you get down to 65 percent, you are assuming that the remainder of those funds are frills, and I don't believe that they are.

SENATOR F. KING: I am trying to find out what do you think in the court, the public opinion, do you think 60 to 65 percent is sufficient?

SENATOR LARSEN: I think that the state would be extremely pleased to get the kind of property tax relief, and that is a court public opinion. I think that this provides property tax relief and support for the schools.

SENATOR SQUIRES: I have shown here and other places a vertical bar chart of the contribution of state to the public education in all 50 states. We are, as you remember, on the far left, and then it moves up gradually until we find the state of Hawaii, which is 90 percent, but the vast majority of states in the United States have, as part of their educational responsibilities from the state, somewhere between 40 and 70 percent. The question then becomes...those states that are 40 or 50, are they providing an inadequate education? If you look at the results throughout the United States, you don't find any educational evidence that would support that. The truth of the matter is that nobody knows. I am probably the one person here that...Senator McCarley and I thought it was \$9050. I was on the Educational Commission and I thought it was \$6030. I don't disagree with the bill as it is now on the table. But it is arbitrary. Now, as to the court, what I thought that the court said was that the legislature has to fund an adequate education as defined by the legislature. That is our responsibility. If in the creation of a bill, we define an adequate education in New Hampshire for a two-year period as being \$700 and something million, which is at least 50 percent of the current expenses on education, then I think that we have a great case. I think that it is defensible, and it is workable. It is incremental and it is arbitrary, but so to are they all. Thank you.

SENATOR HOLLINGWORTH: Senator Larsen, you suggested that we have found a mechanism to fund education and that it is a step forward. I have a couple of questions. The first question is I am sure that you have heard testimony when we had the experts in about the fact that the property taxes don't keep pace with inflation, and in fact, that is why we are in the situation of school costs rising. Is that not true?

SENATOR LARSEN: It is true that property taxes don't keep pace with education or inflation.

SENATOR HOLLINGWORTH: Thank you. My second question is, isn't it true that HB 112, as it sits on the table, relies heavily on statewide property tax? In fact, it is \$524 million or somewhere in that area on statewide property tax. Is that true?

SENATOR LARSEN: It is also true that the plan includes business tax, BPT, BET, which do keep pace with inflation, and so they are sources for keeping pace.

SENATOR HOLLINGWORTH: That is right, those business taxes that you just mentioned, don't they only bring in \$240 million new dollars, so in other words, there really isn't a new mechanism, we have just moved the deck chairs and the statewide property taxes are still heavily relied upon to fund education?

SENATOR LARSEN: This bill...it is true that it has a heavy reliance, and one which I wish were not true on statewide property tax. But I will also say that 80 percent of the towns have been paying at least \$10 per thousand. Eighty percent of the towns, the homeowners have been subsidizing education at a level closer to \$25 to \$30 per thousand. At some point when there are very few doors open, the statewide property tax is a door that is open for having around the state, communities to share the burden in educating the children of their state, and that is why you will find that given the choices that we have, we have turned to the statewide property tax, much as we would have liked not to, have as you know from our conversations, that we would have chosen other ways if we could.

SENATOR HOLLINGWORTH: Senator Larsen, you raised the question of property taxes, and that many communities, 80 percent have been paying higher on their assessed bill for education. Isn't it also true, that in those communities that are so-called donor towns that their assessed at the same level that their evaluations are high, and so they have been paying very high assessed evaluations?

SENATOR LARSEN: Donor towns are property wealthy towns, and they are property wealthy given the fact that they in fact have high property assessments. They also have, in some of them, significant utility property that has not been shared equally over the years, even though utility payers for example, pay in for the property taxes of those towns. So there has been tremendous inequity in this state, and I am not sure that this is the year that we are going to solve all of the inequities that are there, but I believe that we have to focus on the \$849 million that can go out as property tax relief, and the \$849 million which will go to the schools of our state to help address and equalize the educational opportunities for the children of this state. That is where we also have to keep our focus.

SENATOR HOLLINGWORTH: Do you believe, Senator Larsen, that in those so-called property rich towns, that there are poor people, and that in fact, that the bill that is before you will tax property at the level that it does, people who happen to be the poorest who live in manufactured home housing, and who live in apartments will be paying the increase in the property tax?

SENATOR LARSEN: The majority of homeowners will be at the \$5 rate under our plan on the table. The total of homeowners will be at the \$7 rate under this education interim plan.

SENATOR HOLLINGWORTH: Unfortunately, Senator, that is not true, because what it in fact does is that people who live in manufactured housing in parks, that is a business, and those people will be paying \$10 per thousand on their property tax and they will be paying at \$10 per thousand on their mobile home that is in that mobile home park.

SENATOR LARSEN: Senator, if I could fix that, and I believe that we can fix that, we will. Thank you.



SENATOR F. KING: Senator Squires, I was struck by what appears to be some feelings that you have about the numbers be arbitrary...

SENATOR SQUIRES: Yes, that is correct?

SENATOR F. KING: Would you believe that I agree with you, that I have here before me a Concord Monitor of 12/21/98 in which the governor's representative on the adequacy commission suggested that the state spend \$785 million on education?

SENATOR SQUIRES: I remember that discussion clearly. Thank you.

**Recess.**

**Out of Recess.**

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Fernald.**

**Seconded by Senator Francoeur.**

**The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Roberge, Squires, Francoeur, Krueger, Brown, Russman, Klemm.**

**The following Senators voted No: Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Pignatelli, Larsen, J. King, D'Allesandro, Wheeler, Hollingworth, Cohen.**

**Yeas: 11 - Nays: 13**

**Floor amendment failed.**

**Recess.**

**Out of Recess.**

Senator Fernald offered a floor amendment.

Sen. Larsen, Dist. 15

Sen. Blaisdell, Dist. 10

Sen. Fernald, Dist. 11

**1999-0961s**

**09/01**

### **Floor Amendment to HB 112-FN-A**

Amend RSA 21-J:35, I-a as inserted by section 13 of the bill by replacing it with the following:

I-a. The commissioner shall set the uniform education property tax rate at \$8.00 on each \$1,000 of total equalized value as determined under RSA 21-J:3, XIII, of all property in the municipality subject to taxation under RSA 76:3.

Amend RSA 76:3-a as inserted by section 19 of the bill by replacing it with the following:

76:3-a Homestead Exemption. The homestead property of qualifying taxpayers is entitled to an exemption of 25 percent of the value of such property.

SENATOR FERNALD: The amendment is quite simple. You will recall that what we passed on Tuesday had a statewide property tax rate of \$10 per thousand and a 50 percent homestead exemption so that the effective rate on homesteads was five. It had two days to be out there and be commented on. The comment that we received was that for property rich towns, particularly the lakes region and the seacoast, that \$10 was very hard to swallow. What we have done is to change the statewide property tax rate to \$8 and changed the homestead exemption to 25 percent instead of 50 percent, so that the effective rate on homesteads is six instead of five,

the actual rate on non-homestead property is 8 instead of ten. This will bring in about \$35 million less than what we had in our package on Tuesday; however, the capital gains tax, which is part of this package had an underestimate of what it would bring in, in the neighborhood of \$30 million, and it is because the revenue projection that was made was based on 1996 data and no one had bothered to project it forward to 1999. There have been significant increases in capital gains in each of the intervening years, and Stan Arnold projects about another \$30 million above the \$72 that was projected on Tuesday for the capital gains tax. So the whole package has approximately the same dollars in it, but we have changed the rates on the statewide property tax and the homestead exemption.

SENATOR HOLLINGWORTH: I would ask if you could support this amendment. Everything that I said this morning still remains the same. I have grave concerns, but we have to move forward as everyone keeps reminding me, and I keep hearing myself say. I have in my hands the public resources advisory group. This is a release that came out yesterday. It says, "Lack of resources for school funding issue may result in the rating agencies downgrading of the state and the state's locations. If this happens, bonds issued by the state and the state localities will carry a higher interest rate, whereby debt service on the bonds would be higher. It would also happen that localities would lose access to the market for bond issuance if they cannot show a definite source of money for replacement of those bonds." It goes on, but I will just read another paragraph. The increase would be approximately \$3.1 million, if they could get those bonds at all, for the states localities where we calculate the difference on \$100 million bond issuance itemized over 20 years. Assuming that the overall bonds would grade A before the downgrade, the interest rate difference would be A & B rating, is assume to be thirty basic points based on historic spreads since 1995 and the results as you can see, if the localities were downgraded below investment grade, they would have to pay \$6.1 million more in interest cost over the life of the issuance; however, it is possible that the localities would not be able to issue bonds at all at any cost if they cannot identify the source of repayment." I hope...I still wonder what is going to happen in the Committee of Conference. I still do not think that this is the best way to go, but I think that we have to go.

SENATOR COHEN: Senator Fernald, I have a question about the phase in and how that would work. I wonder if you could describe that?

SENATOR FERNALD: I hope that I adequately describe it, but in the first year, you look at the statewide property tax...let me explain how the bill works. You have a statewide property tax rate and you have an adequacy grant from the state. If the statewide property tax raised from the town is less than the adequacy grant, then you get the difference from the state. If the statewide property tax collected from the town is greater than your adequacy grant, then you give the difference to the state. The transition provides that in those towns that have to give to the state because their statewide property tax collection exceeds their adequacy grant, in the first year they only have to give 25 percent of the difference and the second year they have to give 50 and the third year they give 75 percent.

SENATOR COHEN: So in the intervening time, if the legislature is able to come up with something better, you may be able...if the donor towns may eventually...if we can pass something better between now and the end of the four year period, the donor towns, the people in the donor

towns who will be hit hard with this, wouldn't be hit with the full 100 percent amount, so that hopefully we can pass something in the intervening years.

SENATOR FERNALD: It is clear that anything that we do can be changed. In fact, from recent experience, things that we do today can be changed tomorrow. So, yes, you are correct. We can do something different.

SENATOR F. KING: Senator Fernald, I just want to make sure that I understand the answer to the previous question. So what you are saying is that the most that any town would be impacted by election time and November 2000 would be 25 percent?

SENATOR FERNALD: We are already in the April 1 tax year, so we will be in the 50 percent year on November 2000.

SENATOR F. KING: Thank you.

SENATOR COHEN: I have said that I couldn't support something unless it were less than \$6. This is obviously \$6. This is going to hurt a lot of people in my towns. Not everyone is wealthy in my towns. We have to protect lower income people. This is what the Supreme Court was talking about, fairness here. I am not convinced that this is the best way to go. I am not particularly pleased with this. I will tell you that it is going to need some work. I will most reluctantly, vote for this bill because it gets us to a Committee of Conference and hopefully, we can do some work there to make it even better. I am pleased that there is at least that phase in period to give some protection.

SENATOR MCCARLEY: Just very, very briefly. I promise. We have all seemed to feel a need to say that we do not like this plan, and I think that what we don't like is having to ever levy taxes on people or change things that are going to have impacts that we would not like to have on people. I don't think that any of us like that, but I think that this plan with a lot of help from the business community and a lot of other places, is actually doing something very positive for an awful lot of people in this state in terms of speaking towards education, and what we want to try to do moving forward. I think that we ought not to leave here feeling really lousy about perhaps reaching some consensus around that issue of trying to help districts. A lot of the work that has gone into this, a lot of it pushed by Senator King, Fred King in this case, has spoken to trying to make sure that these dollars go back to our communities in a way that is really going to benefit those communities that have had the hardest time over a very long period of time because of the way that we have had a tax structure. So I guess trying to be optimistic that we may move forward with this and get ourselves to a Committee of Conference. I think that should also be optimistic that this is taking an enormous step for our state that is going to be good for our kids, and ultimately, for all of us. So rather than have us all feel lousy about everything, maybe we ought to look at some of what is very positive in this too. Thank you.

SENATOR GORDON: I wasn't going to speak right now, but I guess that has kind of stimulated me to respond to that. That is, I do feel lousy. As said earlier, in desperate times, desperate people do desperate things. I have a friend in the House, Representative Alger. Representative Alger, many people don't know, is the closest living relative of Horacio Alger, Jr., the writer of the book. He is the one who wrote the books *From Rags to Riches* and about people taking personal responsibility and about people adhering to principle. Representative Alger frequently stops at my office and I like to tell him how busy I am, and what he does is consistently



admonish me, not to mistake activity for accomplishment. The reason why I feel bad about what we are doing is because I think that this is activity and not accomplishment. I don't want to take exception with Senator McCarley because I know that she has worked very, very hard on this, but I don't think that she is the only one that has worked very hard on this, I think that a lot of people have worked very hard and very long on this. I am disappointed today. I am disappointed because when we started on this whole thing, we appointed a commission. Senator Delahunty at the time appointed a seven-member committee. Senator Whipple and Senator Blaisdell were on it. For the first few months after the Claremont decision, we talked about one thing, and that was how can we respond to the suit in such a way that we could improve the quality of education? That was the focus. That was the only thing that we seemed to focus on. Somehow that has gotten lost in this thing from my particular point of view, because I don't think that that is in this particular bill. I just don't see it in this particular bill. Then we focused on the adequacy commission and trying to make some rational basis for what is adequacy in this state. I still don't think that we have come to a resolution. We have discussed that here today, what is adequacy? What adequacy is turning out to be, is whatever we decide it is based upon the amount of money that we seem to be able to raise. That is what adequacy should be, so I am disappointed there. I thought that we would end up with a sound foundation for funding education, but we are not ending up with a sound foundation for funding education. We are ending up with all of these bits and pieces. The acupuncture. Then I thought that we were going to have property tax relief, and I don't see anything in this bill that specifically provides for property tax relief. I am disappointed with this amendment and the reason is because we sit here and we talk about fairness, and the fact that we are going to have a tax system that is fair, and then instead of applying the standard of fairness we apply a standard of making it more, or I should say, less unfair. Should I be delirious about passing this on? I am going to tell you what I like in this bill too. This is like being an employer like I, in a small business and having an employee who isn't cutting the mustard. I don't want to have to deal with that employee, so I promote the employee to get rid of him instead of addressing the problem itself. That is what this bill is. We are pushing this on to get rid of it. Are we solving the state's problem? No, we are not solving the state's problem, we are getting rid of our problems so that we don't have to deal with it anymore, here in the Senate. I am actually convinced that two years from now the cost of education is going to be higher, and there will be no substantial tax relief and no improvement in educational quality, and we will continue to search for sufficient funds to fund education, and then two years from now we will be looking back and saying, what did we go through this thing for? What did we do that for? As I said earlier this morning, my concern is that in this particular bill, I think that we are letting others control the agenda. The governor and the speaker of the House deciding what we should pass out of the Senate. I don't think that Senator Fraser got an answer to his question. Can we get together and have a Committee of Conference in the Senate? If somebody could tell me what is the Senate's agenda, that would be a start? I don't know what it is. I guess what I would say to Senator McCarley in response to what she had to say is this bill that we are passing out of here is action as far as I am concerned, and not accomplishment. This is what in desperate times, desperate people do. They do desperate things.

SENATOR LARSEN: If I can just summarize. I believe that this is not just action, but it is forward motion. Allentown \$3.9 million, Claremont \$9.5 million, Franklin \$6.9 million, Merrimack Valley \$10 million, Manchester \$64 million, Nashua who has never received any foundation aid, \$55 million. We are not just action for action sake, but we are sending home property tax relief and school aid assistance. If we lose sight of that we have made a big mistake. This sends aid to the school districts and it is important that we recognize that here today.

SENATOR BROWN: Senator Larsen, are those numbers that you gave us before or after they send out their statewide property tax in?

SENATOR LARSEN: All of the towns that I read you do not send statewide property tax into the state?

SENATOR BROWN: They don't pay any statewide property tax?

SENATOR LARSEN: They are recognized as already paying the \$6 and \$8 rate.

SENATOR BROWN: And that is net, that is new money on top of that?

SENATOR LARSEN: This is money that goes to the school districts as a result of our passing this bill today.

SENATOR F. KING: I just wanted to point out that we are spending millions of more dollars. Under the cheap plan, Allentown would have got \$4.3 million and Claremont under the cheap plan would have received over \$11 million. I think that you said that they were getting \$9.5. We only shorted them \$1.5 million, which isn't bad for a poor town. I wonder what is happening with the rest of the money?

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator F. King.**

**Seconded by Senator Francoeur.**

**The following Senators voted Yes: Fraser, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler, Hollingworth, Cohen.**

**The following Senators voted No: F. King, Gordon, Johnson, Roberge, Squires, Francoeur, Krueger, Brown, Klemm.**

**Yeas: 15 - Nays: 9**

**Floor Amendment adopted.**

Senator F. King is in opposition to the floor amendment on HB 112.

Senator McCarley moved to have **HB 112**, increasing the tobacco tax and imposing the tax on all types of tobacco products, laid on the table.

**Adopted.**

### **LAIID ON THE TABLE**

**HB 112**, increasing the tobacco tax and imposing the tax on all types of tobacco products.

### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in its amendment to the following entitled House Bill sent down from the Senate:

**HB 207-FN-A**, directing the office of state planning to conduct a study of the effects of sprawl in the state and making an appropriation therefor.

**Recess.**

**Out of Recess.****HOUSE MESSAGE**

The House of Representatives has passed a bill with the following title in the passage in which it asks the concurrence of the Senate:

**HB 117-FN-A-L**, establishing a uniform education property tax and a utility property tax, increasing the business profit and real estate transfer taxes, and including other sources of revenue to provide funding for an adequate public education and making an appropriation therefor.

**SUSPENSION OF THE RULES**

Senator Trombly moved that we disperse with referral to committee, that the Rules of the Senate be so far suspended to dispense with a hearing, a committee report and advertisement in the Senate Calendar and that this bill be on second reading at the present time.

**Adopted by the necessary 2/3 votes.**

Senator Gordon is in opposition to the motion of suspending the rules.

**HB 117-FN-A-L**, establishing a uniform education property tax and a utility property tax, increasing the business profit and real estate transfer taxes, and including other sources of revenue to provide funding for an adequate public education and making an appropriation therefor.

Senator Larsen offered a floor amendment.

Sen. Larsen, Dist. 15

Sen. Blaisdell, Dist. 10

Sen. McCarley, Dist. 6

Sen. Fernald, Dist. 11

**April 22, 1999**

**1999-0965s**

**Floor Amendment to HB 117-FN-A-LOCAL**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to state taxes and other sources of revenue for funding an adequate education; relative to establishing the cost of an adequate education, and relative to creating a commission to study the methodology used in establishing the cost of an adequate education and a tax equity and efficiency commission, and making appropriations therefor.

Amend the bill by replacing all after the enacting clause with the following:

**1 Purpose; Intent.**

I. In December 1997, the New Hampshire supreme court in the Claremont II decision ruled that it is the state's duty to define and provide all New Hampshire's public school students with an adequate education, and further that the manner of raising revenue to pay for an adequate education be through a system of taxation that is proportional in substance and just and reasonable in application.

II. Through the passage of House Bill 1075, the general court defined an adequate education. The definition grew out of work undertaken in the early 1990's to develop curriculum frameworks which specifically address the importance of establishing and measuring what all New Hampshire students should know and be able to do. The curriculum frameworks were developed with the widespread participation of educators, business people,



government officials, community representatives, and parents. They have evolved into a critical component of providing a quality public education to New Hampshire students.

III. The New Hampshire educational improvement and assessment program ("NHEIAP") tests were developed in conjunction with the curriculum frameworks as a measure of student performance. The general court therefore finds that the NHEIAP tests are a measure of student performance and can be used to develop and implement effective methods for assessing learning and its application. The general court further finds that in determining the cost of a constitutionally adequate education, performance based outcome criteria, specifically the NHEIAP test scores, can be used to identify school districts that are delivering such a constitutionally adequate education. The NHEIAP tests are comprehensive and difficult. Students taking these tests in the third, sixth, and tenth grades are scored on 4 levels of performance: novice, basic, proficient, and advanced. The general court finds that students who score in the basic, proficient, and advanced levels on these state tests are making progress toward achieving the goals set forth in House Bill 1075.

IV. The general court recognizes the inherent imprecision, subjectivity, and difficulty in determining the cost of an adequate education. Numerous complex financial, budgetary, administrative, and educational elements must be in place in order for the state to fully meet the mandates of Claremont II. Those mandates coupled with the policy of the state recognize that an adequate public education is not a static concept removed from the demands of an evolving world. An adequate education transcends mere competence in the reading, writing and arithmetic. Such an education shall provide all students with a meaningful opportunity to acquire the knowledge and skills necessary to prepare them for successful participation in the social, economic, scientific, technological, and civic realities of society, now and in the years to come. To ensure these fundamental rights, as recognized by the court, thoughtful and deliberate planning with the involvement of many sources of expertise as well as phased-in implementation of the major elements over time is required. Concomitantly, such planning and implementation is required in order to ensure:

(a) That the educational needs of all children are met, including regular education students, students with special needs such as students with disabilities, students who are economically disadvantaged or are otherwise educationally at risk, or those who are intellectually gifted;

(b) That the needed changes are long-term in nature, truly embedded on the local and state level, gain acceptance and are both cost and educationally effective, and to those ends address underlying or systemic issues; and

(c) That compliance with all applicable federal laws occurs.

V. Under Claremont II, and as recently reaffirmed by the court in its November 1998 opinion, a funding system for a constitutionally adequate education must be put in place. This bill provides for a constitutionally adequate education that is reasonably and proportionally funded through a combination of revenue sources.

VI. However, in order to meet the aforementioned competing requirements of a long-range, carefully planned, and phased-in solution and to address the need to have an acceptable system in place, this act establishes a special commission to develop long-term plans and solutions to comprehensively and permanently meet constitutional mandates.

2 Cigarette Tax. Amend RSA 78:7 to read as follows:

78:7 Tax Imposed. A tax upon the retail consumer is hereby imposed at the rate of ~~[37]~~ 49 cents for each package containing 20 cigarettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes, on all tobacco products sold at retail in this state. The payment of the tax shall be evidenced by affixing stamps to the smallest packages containing the tobacco products in which such products usually are sold at retail. The word "package" as used in this section shall not include individual cigarettes. No tax is imposed on any transactions, the taxation of which by this state is prohibited by the Constitution of the United States.

3 Applicability. Section 2 of this act shall apply to all persons licensed under RSA 78:2. Such persons shall inventory all taxable tobacco products in their possession and file a report of such inventory with the department of revenue administration on a form prescribed by the commissioner within 20 days after the effective date of this act. The tax rate effective on the effective date of section 2 of this act, shall apply to such inventory and the difference, if any, in the amount paid previously on such inventory and the current effective rate of tax shall be paid with the inventory form. The inventory form shall be treated as a tax return for the purpose of computing penalties under RSA 21-J.

4 Gender Reference Change. Amend the introductory paragraph of RSA 21-J:3 to read as follows:

In addition to the powers, duties, and functions otherwise vested by law, including RSA 21-G, in the commissioner of the department of revenue administration, ~~[he]~~ **the commissioner** shall:

5 Duties of Commissioner. Amend RSA 21-J:3, XIII to read as follows:

XIII. Equalize annually **by March 31** the valuation of the property in the several towns, cities, and unincorporated places in the state, **including the value of property exempt pursuant to RSA 72:37, 72:37-b, 72:39-a, 72:62, 72:66, and 72:70**, by adding to or deducting from the aggregate valuation of the property in towns, cities, and unincorporated places such sums as will bring such valuations to the true and market value of the property, including the equalized value of property formerly taxed pursuant to the provisions of RSA 72:7; 72:15, I, V, VII, VIII, IX, X, and XI; 72:16; 72:17; 73:26; 73:27; and 73:11 through 16 inclusive, which were relieved from taxation by the laws of 1970, 5:3; 5:8; 57:12; and 57:15, the equalized valuation of which is to be determined by the amount of revenue returned in such year in accordance with RSA 31-A, and by making such adjustments in the value of other property from which the towns, cities, and unincorporated places receive taxes **or payments in lieu of taxes** as may be equitable and just, so that any public taxes that may be apportioned among them shall be equal and just. **In carrying out the duty to equalize the valuation of property, the commissioner shall follow the procedures set forth in RSA 21-J:9-a.**

6 Duties of the Commissioner. Amend RSA 21-J:3, XV to read as follows:

XV. Establish and approve tax rates as required by law **including the uniform education tax rate.**

7 New Paragraph; Duties of Commissioner. Amend RSA 21-J:3 by inserting after paragraph XXIV the following new paragraph:

XXV. Petition the board of tax and land appeals to issue an order for reassessment of property pursuant to the board's powers under RSA 71-B:16-19 whenever the valuation of property for equalization purposes in

a particular city, town, or unincorporated place is disproportional to the valuation for equalization purposes in other cities, towns, or unincorporated places in the state.

8 Division of Property Appraisal; Department of Revenue Administration. RSA 21-J:9 is repealed and reenacted to read as follows:

21-J:9 Division of Property Appraisal. There is established within the department the division of property appraisal, under the supervision of a classified director of property appraisal who shall be responsible for the following functions, in accordance with applicable laws:

I. Assisting and supervising municipalities and appraisers in appraisals and valuations as provided in RSA 21-J:10 and RSA 21-J:11.

II. Appraising state-owned forest and recreation land under RSA 227-H and RSA 216-A.

III. Annually determining the total equalized valuation of properties in the cities and towns and unincorporated places according to the requirements of RSA 21-J:9-a.

IV. Preparing a standard appraisal manual which may be used by assessing officials, and holding meetings throughout the state with such officials to instruct them in appraising property.

9 New Section; Equalization Procedure. Amend RSA 21-J by inserting after section 9 the following new section:

21-J:9-a Equalization Procedure. The following procedures shall apply in determining the equalization of property within the cities, towns, and unincorporated places as required by RSA 21-J:3, XIII:

I. The commissioner shall annually conduct a sales-assessment ratio study which shall include arm's length sales or transfers of property that occurred 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made.

II. In determining the arm's length sales or transfers that are included in the sales-assessment ratio study, the commissioner may use a randomly selected sample of such sales and transfers the size of which shall be determined by the total taxable parcels in the city, town, or unincorporated place.

III. If less than 2 percent of the total taxable parcels in a city, town, or unincorporated place has been transferred by an arm's length sale or transfer during the 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made or the commissioner determines the sales are not representative of the property within the municipality, the commissioner may choose one or more of the following options in the order listed:

(a) Include appraisals of any of the taxable property of such city, town, or unincorporated place in the sales-assessment ratio study. Such appraisals shall be based on full and true market value pursuant to RSA 75:1 and shall be performed by department appraisers. The property to be appraised shall be selected by the commissioner.

(b) Include arm's length sales or transfers in the city, town, or unincorporated place, within 2-1/2 years preceding April 1 of the year preceding the tax year for which such equalization is made.

(c) Consider recent equalization ratio activity in adjoining cities, towns, or unincorporated places.

IV. The commissioner may use the inventory of property transfers authorized by RSA 74:18 in determining the equalized value of property and may consider such other evidence as may be available to the commissioner on or before the time the final equalized value is determined.

10 Appraisals of Property for Ad Valorem Tax Purposes. RSA 21-J:11 is repealed and reenacted to read as follows:



### 21-J:11 Appraisals of Property For Ad Valorem Tax Purposes.

I. Every person, firm, or corporation intending to engage in the business of making appraisals on behalf of a municipality for tax assessment purposes in this state shall notify the commissioner of that intent in writing. No person, firm, or corporation engaged in the business of making appraisals of taxable property for municipalities and taxing districts shall enter into any contract or agreement with any town, city, or other governmental division without first submitting the proposed contract or agreement to the commissioner for examination and approval and submitting to the commissioner evidence of financial responsibility and professional capability of personnel to be employed under the contract.

II. The commissioner, at no expense to the municipality, shall monitor appraisals of property and supervise appraisers as follows:

(a) Assure that appraisals comply with all applicable statutes and rules;

(b) Assure that appraisers are complying with the terms of any appraisal contract;

(c) Review the accuracy of appraisals by inspection, evaluation, and testing, in whole or in part, of data collected by the appraisers; and

(d) Report to the governing body on the progress and quality of the municipality's appraisal process.

III. The commissioner shall adopt rules under RSA 541-A relative to the provisions required of all contracts for appraisal services and the methodology for inspection, evaluation, and testing of data for the purposes of appraisal monitoring.

11 Reports Required. Amend the introductory paragraph of RSA 21-J:34 to read as follows:

The governing body of each city, town, unincorporated [~~town, unorganized~~] place, school district, and village district, and the clerk of each county convention shall submit to the commissioner of revenue administration the following reports necessary to compute and establish the **uniform education property tax rate and the** tax rate for each city, town, unincorporated [~~town, unorganized~~] place, school district, village district, and county. The commissioner shall adopt rules under RSA 541-A establishing the form and content of these reports:

12 New Paragraph; Reports Required. Amend RSA 21-J:34 by inserting after paragraph XIV the following new paragraph:

XV. A report filed by the assessing officials of each city, town, and unincorporated place shall certify sales-assessment information necessary for the department to conduct the annual sales-assessment ratio study required by RSA 21-J:9-a. This report shall be filed by November 30 or 30 days after receipt from the department. Municipalities which fail to timely file the report shall pay a penalty to the state in the amount of \$100 for each day the report is not timely filed.

13 New Paragraph; Setting of Tax Rates by Commissioner. Amend RSA 21-J:35 by inserting after paragraph I the following new paragraph:

I-a. The commissioner shall set the uniform education property tax rate at \$8.00 on each \$1,000 of total equalized value as determined under RSA 21-J:3, XIII, of all property in the municipality subject to taxation under RSA 76:3.

14 Revenue Sharing. Amend RSA 31-A:4, I to read as follows:

I. Its 1978 distribution under RSA 31-A plus its share under the equalized formula of an annual increase of 5 percent in the previous year's aggregate distribution, through the year 1981, excluding revenues derived from RSA 77-A:20. **The amount of money which is**

*removed from the formula for deposit in the education trust fund shall not affect the remaining municipal revenue sharing distribution. The same amount distributed to each municipality in fiscal year 1998, excluding the amount apportioned to the school district in the 1998 property tax calculations, shall be distributed to each municipality in fiscal year 1999 and each year thereafter until the legislature revises the formula or provides additional appropriations that will affect the distribution amount.*

15 Board of Tax and Land Appeals; Authority. Amend RSA 71-B:5, II to read as follows:

**II.(a)** To hear and determine ~~[any]~~ appeals *by municipalities* relating to the ~~[equalization of valuation performed]~~ *equalized valuation of property determined* by the commissioner of revenue administration pursuant to RSA 21-J:3, XIII. Any ~~[town]~~ *municipality* aggrieved by ~~[an]~~ *its* equalized valuation as determined by the commissioner of revenue administration must appeal to the board in writing within 30 days of ~~[the town's notification]~~ *notice* of ~~[the]~~ *its final* equalized valuation by the commissioner. *The board shall hear and make a final ruling on such appeal within 45 days of its receipt by the board. The board's decision on such appeal shall be final pending a decision by the supreme court of any appeal by any municipality of a board's decision. The supreme court shall give any appeal under this section priority in the court calendar.*

(b) Decisions by the supreme court on appeals made under subparagraph (a) that are issued prior to September 1 shall be used by the commissioner of revenue administration in determining the taxes to be raised by each municipality in the tax year commencing April 1 of the succeeding year.

(c) Decisions by the supreme court on appeals made under subparagraph (a) that are issued after September 1 shall be used by the commissioner of revenue administration in determining the taxes to be raised in the tax year commencing April 1 of the second succeeding year. Any adjustments that need to be made to a municipality's tax rate based on a decision by the supreme court under this subparagraph shall be made by the commissioner of revenue administration in the tax year commencing April 1 of the second succeeding year.

16 New Paragraph; Order for Reassessment. Amend RSA 71-B:16, IV to read as follows:

**IV.** When a complaint is filed with the board alleging that all of the taxable real estate or taxable property in a taxing district should be reassessed or newly assessed for any reason, provided that such complaint must be signed by at least 50 property taxpayers or 1/3 of the property taxpayers in the taxing district, whichever is less[:]; or

**V. When the commissioner of revenue administration files a petition with it pursuant to RSA 21-J:3, XXV.**

17 New Section; Inventory of Property Transfers. Amend RSA 74 by inserting after section 17 the following new section:

74:18 Inventory of Property Transfers.

**I.** In order to properly equalize the value of property under RSA 21-J:3, XIII, an inventory of property transfers shall be filed with the department of revenue administration and with the municipality where the property is located for each transfer of real estate or interest in real estate. Each form may include the following information:

(a) The buyer and seller's names and post transaction addresses and the name and address of a contact person if the buyer or seller is a trust or corporation.

(b) A description of the exact location of the property by town, street, and the assessor's map, lot, and block number.

(c) The acreage included in the sale.

(d) An accurate description of the property included in the sale, the neighborhood where the property is located, and the type and style of the property sold.

(e) The buyer's ownership interest in the property.

(f) The sale price, date of transfer, and the amount mortgaged.

(g) The description of the type of transfer that has taken place.

(h) The amount of personal property included in the sale price.

(i) Whether the property was previously occupied and whether the property will serve as the buyer's primary residence.

(j) The financing arrangements made to purchase the property to be answered at the option of the buyer.

(k) Whether any concessions were made in the sale.

(l) Whether the property was in current use.

(m) Whether land use taxes were considered in the sale.

(n) The buyer's dated signature certifying that the information indicated on the form is true.

II. The inventory of property transfers required by this section shall be filed with the department of revenue administration and with the municipality where the property is located by the purchaser, grantee, assignee, or transferee, no later than 30 days from the recording of the deed at the register of deeds or transfer of real estate, whichever is later. Persons required to file the inventory of property transfers who willfully fail to file or willfully make false statements on the forms shall be guilty of a violation.

III. No deed, recording a transfer of real estate or any interest in real estate, executed before October 1, 1995, shall be required to comply with this section.

IV. Failure to comply with this section shall not be construed to cloud title.

V. Any information provided to the department or the municipality pursuant to this section shall be exempt from the right-to-know law, RSA 91-A.

18 Education Property Tax. RSA 76:3 is repealed and reenacted to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate calculated by the commissioner of revenue administration pursuant to the authority granted in RSA 21-J:35, I-a is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except such property exempted under RSA 76:3-a or subject to tax under RSA 82.

19 New Sections; Homestead Exemption. Amend RSA 76 by inserting after section 3 the following new sections:

76:3-a Homestead Exemption. The homestead property of qualifying taxpayers is entitled to an exemption of 25 percent of the value of such property.

76:3-b Definitions. For purposes of determining and claiming the homestead exemption in RSA 76:3-a:

I. "Assessing official" means the assessing authority of any town, city, or unincorporated place.

II. "Commissioner" means the commissioner of the department of revenue administration.

III. "Department" means the department of revenue administration.



IV. "Dwelling" means the house or habitation for a natural person or persons consisting of a structure that provides shelter from the elements and contains at minimum a space for preparation and consumption of food and for repose on a daily basis.

V. "Municipality" means a city, town, or unincorporated place.

VI. "Homestead property" means the dwelling owned by a claimant or in the case of a multi-unit dwelling, the portion of the dwelling which is used as the claimant's principal place of residence. "Homestead property" shall not include land and buildings taxed under RSA 79-A or land and buildings or the portion of land and buildings rented or used for commercial or industrial purposes. In this paragraph, a dwelling is "owned" by a claimant if the claimant is in possession of the dwelling as a vendee under a land contract. A dwelling may be "owned" by more than one person if they hold the property as joint tenants or tenants in common, in which case their homestead exemption shall be apportioned among them on their claim forms.

VII. "Qualifying taxpayer" means a person who on April 1 owns homestead property subject to the tax imposed under RSA 76:3, and who by June 30, 1999, or in subsequent years by May 1 of the tax year for which the claim is made, submits a claim to the selectmen or assessing officials on a form prescribed by the commissioner and signed by the claimant under the pains and penalties of perjury. Claims filed after June 30, 1999, or May 1 of subsequent years shall not be considered timely for the current tax year, but shall be considered filed for the following tax year..

76:3-c Acceptance or Denial of Claims; Grounds for Denial; Procedure; Claims Continuous.

I. Upon receipt of a claim for a homestead exemption, the selectmen or assessing officials shall review the claim and accept or deny the claim by August 1 of the year for which the claim is timely.

II. The only grounds for the selectmen or assessing officials to deny a claim are:

(a) If the claim form is incomplete or incorrectly filled out; or

(b) If a majority of the selectmen or assessing officials have personal knowledge that the property on which the claim is made is not homestead property owned by the claimant.

III. If they deny a claim, the selectmen or assessing officials shall send written notice to the claimant on a form prescribed by the commissioner and provided to each municipality. Failure of the selectmen or assessing officials to respond by August 1 shall constitute acceptance of the claim. The selectmen or assessing officials will be deemed to have responded by August 1 if, on or before that date, the claimant has received the written notice from the selectmen or assessing officials, or if the selectmen or assessing officials have sent, on or before August 1, the written notice to the claimant by first-class mail, postage prepaid, at the mailing address provided by the claimant on the claim form. If August 1 is a Saturday, Sunday, or legal holiday, then the selectmen's or assessing official's denials must be delivered or mailed on or before the day that is not a Saturday, Sunday, or legal holiday.

IV. All claims accepted by the selectmen or assessing officials shall be sent to the department by August 20. The commissioner may prescribe a form for the municipalities to use for this purpose.

V. Accepted claims shall continue from year to year without necessity for refile unless there is a change in ownership or use of the property. A change in ownership requires the filing of a new claim, but the homestead treatment continues as long as the new owner uses the property as homestead property.

76:3-d Mixed Use; Property Owned by Multiple Claimants; Manufactured Housing.

I. The following shall apply to the determination of the amount of property value exempted relative to a homestead which is part of a single tax parcel upon which is located other dwelling units not owned or occupied by the taxpayer or other significant non-homestead property:

(a) If the tax parcel includes property used for business or other nonresidential use, the exempt homestead amount shall include in addition to the actual homestead the lesser of 1,000 square feet of floor area of such non-homestead property or \$25,000 of equalized assessed valuation, except that family owned and operated farms which are not owned by a business entity or held in the name of a non-natural person shall be eligible for the full homestead exemption on all property not assessed under RSA 79-A.

(b) If the tax parcel includes other dwellings or dwelling units, the value of the homestead exemption relative to the claimed homestead shall be determined by the assessing official as follows:

(1) Divide the value of the tax parcel by the number of dwelling units; or

(2) If the square footage of each dwelling unit is known, multiply the value of the tax parcel by a fraction consisting of the square footage of the claimed homestead divided by the total square footage of all dwelling units in the parcel; or

(c) In lieu of the methods of determining the amount of homestead exemption in subparagraph (a) or (b), a taxpayer may present competent evidence of a greater proportion of exempt value to the assessing officials. In such instance the taxpayer bears the burden of proving the claimed exemption by the preponderance of the evidence.

II. If homestead property is owned by more than one claimant, the claimants shall apportion their claims so that the total of their claims does not exceed the exemption that could be claimed under RSA 76:3-a if the property were owned by one claimant.

III. Manufactured housing as defined in RSA 674:31, qualifying as homestead property and sited on land not owned by the claimant, shall be eligible for the homestead exemption based on the value of such manufactured housing without the land.

76:3-e Partial Year Homestead Exemption. If a taxpayer purchases a homestead after April 1 for which no homestead exemption was claimed by the previous owner, the taxpayer may apply to the department for a refund of statewide education property tax previously paid on the homestead, but for which no application was made. The amount of such refund shall be apportioned according to the number of days in the tax year the taxpayer owned and occupied the homestead. Claims by taxpayers purchasing homestead property shall be filed with the inventory of property transfer required to be filed with the municipality pursuant to RSA 74:18. The selectmen or assessing officials shall, within 30 days of filing of the referral claim, accept or deny it and, if accepted, notify the department. The department shall certify the amount of such refund to the state treasurer for payment from the education trust fund created by RSA 198:39.

76:3-f Forms. Forms necessary for the implementation of the homestead exemption in RSA 76:3-a shall be prescribed by the commissioner and provided to each municipality. The provisions of RSA 541-A shall not apply to the development of such forms.

76:3-g False Homestead Claims. Any person who files a false homestead claim may, in addition to paying the full tax owed plus charges and interest, be subject to a penalty of 2 times the difference between the tax paid on the property and the tax owed.

20 What Taxes Assessed. Amend RSA 76:5 to read as follows:

76:5 What Taxes Assessed. The selectmen shall seasonably assess all state and county taxes for which they have the warrants of the ~~[state]~~ **commissioner of revenue administration** and county treasurers respectively; all taxes duly voted in their towns; and all school~~[-school-house;]~~ and village district taxes authorized by law or by vote of any school or village district duly certified to them; and all sums required to be assessed by RSA 33.

21 Commissioner's Warrant. RSA 76:8 is repealed and reenacted to read as follows:

76:8 Commissioner's Warrant.

I. The commissioner of revenue administration shall annually calculate the proportion of the education property tax to be raised by each municipality by multiplying the uniform education property tax rate by the total equalized value of all property in the municipality as determined under RSA 21-J:3, XIII.

II. The commissioner shall issue a warrant under the commissioner's hand and official seal for the amount computed in paragraph I to the selectmen or assessors of each municipality at the time of the setting of the tax rate directing them to assess such sum and pay it to the municipality for the use of the school district or districts and, if there is an excess education tax payment due under RSA 198:47, I, directing them to assess the amount of that excess education tax payment and pay it to the department of revenue administration for deposit in the education trust fund. The commissioner shall also issue a warrant under the commissioner's hand and official seal for such sums and at such times as may be prescribed for other taxes assessed by such selectmen or assessors of the municipality.

III. Municipalities are authorized to assess local property taxes necessary to fund school district appropriations not funded by the education property tax, by distributions from the education trust fund under RSA 198:39, or by other revenue sources.

22 Commissioner's Report. RSA 76:9 is repealed and reenacted to read as follows:

76:9 Commissioner's Report. The commissioner of revenue administration shall report to the governor, the speaker of the house of representatives, the president of the senate, and the commissioner of education each year on or before October 1, a statement of the education property tax warrants to be issued for the tax year commencing April 1 of the succeeding year.

23 Information Required. Amend RSA 76:11-a, I to read as follows:

I. The tax bill which is sent to every person taxed, as provided in RSA 76:11, shall show the rate for municipal, ~~[school]~~ **local education, state education**, and county taxes separately, the assessed valuation of all lands and buildings for which said person is being taxed, and the right to apply in writing to the selectmen or assessors for an abatement of the tax assessed as provided under RSA 76:16. The department of revenue administration shall compute for each town and city the rates which are to appear on the tax bills and shall furnish the required information to the appropriate town or city.

24 Extent. Amend RSA 85:1 to read as follows:

85:1 Who May Issue. The state treasurer **or the commissioner of revenue administration**, and each county and town treasurer, may



issue extents under their hands and seals respectively, in cases authorized by law, and such extents shall be deemed to be executions against the person and property.

25 New Subdivisions; State Aid for Educational Adequacy; Education Trust Fund; Excess Education Property Tax Payment; Commission. Amend RSA 198 by inserting after section 37 the following new subdivisions:

State Aid for Educational Adequacy; Education Trust Fund

198:38 Definitions. In this subdivision:

I. "Municipality" means a city, town, or unincorporated place.

II. "School district" means school district as defined in RSA 194:1 or RSA 195:1.

III. "Elementary school" means a school with any of the grades kindergarten through 8.

IV. "High school" means a school with any of the grades 9 through 12.

V. "Average base per pupil cost of an elementary school pupil" means the amount as determined in accordance with RSA 198:40.

VI. "Weighted pupils" means resident pupils weighted as follows:

(a) Every pupil, including kindergarten pupils, 1.0.

(b) A high school pupil, an additional weight of 0.2.

(c) An educationally disabled child, an additional weight of 1.0.

(d) An elementary pupil who is eligible to receive a free or reduced-price meal shall receive an additional weight as follows:

(1) If the pupil is in a district in which less than 12 percent of the elementary pupils are eligible to receive a free or reduced-price meal, and additional weight of zero.

(2) If the pupil is in a district where at least 12 percent but less than 24 percent of the elementary pupils are eligible to receive a free or reduced-price meal, an additional weight of 0.5.

(3) If the pupil is in a district in which at least 24 percent of the elementary pupils are eligible to receive a free or reduced-price meal, an additional weight of 1.0.

VII. "Educationally disabled child" means an educationally disabled child as defined in RSA 186-C:2, I.

VIII. "Consumer price index" means the consumer price index for all items for urban consumers for the Northeast published by the United States Department of Labor.

IX. "Average daily membership in attendance" means average daily membership in attendance as defined in RSA 189:1-d, III.

X. "Average daily membership in residence" and "resident pupils" mean the average daily membership in residence as defined in RSA 189:1-d, IV.

XI. "Transportation costs" means the costs of transporting pupils to and from school and other school activities reported by school districts on the MS-25 form.

198:39 Education Trust Fund Created and Invested.

I. The state treasurer shall establish an education trust fund in the treasury. Moneys in such fund shall not be used for any purpose other than to distribute adequate education grants to municipalities' school districts pursuant to RSA 198:42 and make catastrophic aid payments under RSA 186-C:18, III(d). The state treasurer shall deposit into this fund immediately upon receipt:

(a) The full amount of excess property tax payments from the department of revenue administration pursuant to RSA 198:47.

(b) All moneys due the fund in accordance with RSA 284:21-j.

(c) The school portion of any revenue sharing funds distributed pursuant to RSA 31-A which were apportioned to school districts in the property tax rate calculations in 1998.

(d) Tobacco settlement funds in the amount of \$30,000,000 annually.

(e) Any other moneys appropriated from the general fund.

II. The education trust fund shall be nonlapsing. The state treasurer shall invest that part of the fund which is not needed for immediate distribution in short-term interest-bearing investments. The income from these investments shall be returned to the fund.

198:40 Methodology for Calculating the Cost of an Adequate Education.

I. For the fiscal year beginning July 1, 1999, the average base per pupil cost of an elementary school pupil shall be \$3,303.

II. For the fiscal year beginning July 1, 2000, the average base per pupil cost of an elementary school pupil shall be \$3,468.

III. For the biennium beginning July 1, 2001, and every biennium thereafter, the average base per pupil cost of an elementary school pupil shall be established by the general court.

IV. If the general court makes no change in the average base per pupil cost of an elementary school pupil, the average base per pupil cost for the previous fiscal year shall be adjusted by the change in the consumer price index between the January immediately preceding the beginning of the fiscal year of distribution and the second preceding January. In making the calculations required by this subdivision in subsequent fiscal years, the department of education shall use the average daily membership in residence, special education costs, and transportation costs for the second preceding school year and the district percentage of pupils eligible to receive a free or reduced-priced meal reported to the department of education on October 1 of the second preceding calendar year.

V. The weighted average daily membership in residence for each district shall be calculated by combining the district's elementary average daily membership in residence with its weighted high school average daily membership in residence, the district's average daily membership in residence resulting from educationally disabled children, and the district's additional average daily membership in residence resulting from elementary pupils eligible to receive a free or reduced-priced meal. The statewide weighted average daily membership in residence of pupils shall be calculated by combining the weighted average daily membership in residence of each school district in the state.

VI. For each fiscal year, the statewide cost of an adequate education for all pupils shall be calculated by multiplying the average base per pupil cost of an adequate education by the statewide weighted average daily membership in residence of pupils and then adding 70 percent of total statewide district transportation costs.

198:41 Determination of Adequate Education Grants.

I. Except for municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of education shall determine the amount of the adequate education grant for the municipality as follows:

(a) Multiply the average base per pupil cost of an adequate education by the weighted average daily membership in residence for the municipality;

(b) Add to the product of subparagraph (a), 70 percent of the municipality's apportioned transportation cost;

(c) Subtract from the sum of subparagraph (b) the amount of the education property tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76:9 for the next tax year.

II. For municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of revenue administration shall determine the amount of the adequate education grant for each municipality as the lesser of the following 2 calculations:

(a) The amount calculated in accordance with paragraph I of this section; or

(b) The total amount paid for items of current education expense as determined by the department of education minus the amount of the education property tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76:9 for the next tax year.

198:42 Distribution Schedule of Adequate Education Grant.

I. The adequate education grant determined in RSA 198:41 shall be distributed to each municipality's school district or districts from the education trust fund in 4 payments of 20 percent on July 1, 20 percent on September 1, 30 percent on January 1, and 30 percent on April 1 of each school year.

II. For the fiscal year ending June 30, 2000, an amount calculated by the commissioner of education necessary to fund the grants under RSA 198:41 is hereby appropriated from the education trust fund created under RSA 198:39 to the department of education.

III. The general court is constitutionally obligated to fund the cost of an adequate education, and there are hereby appropriated the funds necessary to make the payments required under RSA 198:41. The governor is authorized to draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

IV. The department of education shall certify the amount of each grant to the state treasurer and direct the payment thereof to the school district. When a payment of a grant is made to a school district, the municipality on whose behalf the payment is made, shall receive notification from the state treasurer of the amount of the payment made to its school district or districts.

198:43 Additional Education Expenditures. School districts are authorized to develop educational programs beyond those required for an adequate education and to raise and appropriate amounts necessary for such programs.

198:44 Use of Funds for Education Purposes.

I. Annually, each school district shall appropriate an amount that equals or exceeds the amount necessary to fund an adequate education for the pupils in that district. Notwithstanding any other provision of law, in the event a school district fails to appropriate at least the required amount, that amount shall be assessed and collected by the municipality, appropriated to the school district, and expended for educational purposes in accordance with paragraph IV without a vote of the school district.

II. On or before June 30 of each year, the individual with fiscal responsibility in each municipality shall submit a statement to the commissioner of revenue administration and the commissioner of education that the funds collected by the municipality pursuant to RSA 76:8 have been paid over to the school district or districts to be expended for educational purposes in accordance with paragraph IV. The statement shall include the following: *"I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete."*



III. If a municipality uses any part of the funds collected pursuant to RSA 76:8 for non-educational purposes, the municipality shall pay to the school district an amount equal to the portion of funds used for such non-educational purposes.

IV. The funds collected by municipalities pursuant to RSA 76:8 and the funds received from the state pursuant to RSA 198:42 shall be appropriated by a school district only for current education expenses or transfers to reserves or trusts funds and shall not be used for any other purpose.

V. On or before June 30 of each year, the individual with fiscal responsibility in each school district shall submit a statement to the commissioner of revenue administration and the commissioner of education that an amount of money that equals the amount necessary to fund an adequate education for the pupils in that district was used in accordance with paragraph IV. The statement shall include the following: ***"I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete."***

198:45 Duties of the Department of Education and the Board of Education.

I. The department of education shall, on or before September 30 of each year, collect from the school districts final data concerning all aspects of student attendance for the school year ending June 30 of that year necessary to establish the average daily membership, average daily membership in residence, and weighted average daily membership in residence, including the municipality of residence for each pupil for that year. The department of education shall submit a report by December 31 to the speaker of the house of representatives and the senate president to be used for purposes of determination by the legislature of the appropriation to the education trust fund. A copy of such report shall, at the same time, be given to the department of revenue administration.

II. The board of education shall adopt rules pursuant to RSA 541-A necessary to the proper administration of this subdivision.

198:46 Submission of Data by School Districts. Each school district shall submit all attendance information required by the department of education under this subdivision on or before September 30 of each year.

#### Excess Education Property Tax Payment

198:47 Excess Education Property Tax Payment.

I. Except as provided in paragraph IV and RSA 198:48, VI, municipalities for which the education property tax exceeds the amount necessary to fund an adequate education determined by RSA 198:40 shall collect and remit such excess amount to the department of revenue administration on or before March 15 of the tax year in which the excess occurs.

II. The amount of such excess to be remitted shall not include any income derived from the investment of funds by the town treasurer under RSA 41:29. Any funds remaining after full payment of the excess tax required in paragraph I shall become available for unrestricted use by the municipality.

III. The commissioner of the department of revenue administration shall collect from the selectmen the excess tax and pay the excess tax over to the state treasurer for deposit in the education trust fund established by RSA 198:39.

IV. The commissioner of the department of revenue administration shall calculate the excess amount owed by each municipality pursuant to paragraph I for the tax year 1999. Notwithstanding any other provision of this section, the warrant issued pursuant to RSA 76:8 shall di-

rect municipalities to only collect and remit to the department of revenue administration not more than the following percentages of excess amounts during the tax years 1999-2001:

- (a) In tax year 1999, 25 percent;
- (b) In tax year 2000, 50 percent; and
- (c) In tax year 2001, 75 percent.

198:48 Form. The commissioner shall approve and provide forms relative to the reporting and remitting of excess education property tax by the municipalities.

#### Adequate Education and Education Financing Reform Commission

198:49 Adequate Education and Education Financing Reform Commission Established; Membership.

I. There is hereby established an adequate education and education financing reform commission which shall be composed of 19 members as follows:

(a) The chairpersons of the house education and house finance committees, appointed by the speaker of the house.

(b) The chairpersons of the senate education and senate finance committees, appointed by the president of the senate.

(c) Four members appointed by the governor, one of whom shall be an elementary or secondary special education teacher, one of whom shall be a primary teacher who does not teach special education, and one of whom shall be a member of the business community.

(d) The chancellor of the university system of New Hampshire or designee.

(e) The commissioner of the regional community-technical college system.

(f) One member from the state board of education, appointed by the chairperson of the state board of education.

(g) One member from a special education advocacy organization, appointed by such organization; and

(h) Seven members who shall be agreed to and jointly appointed by the governor, the president of the senate, and the speaker of the house consisting of the following:

(1) One local school board member, recommended by the New Hampshire School Boards Association.

(2) One school administrator, recommended by the New Hampshire School Administrators Association.

(3) One special education administrator at the elementary or secondary school level, recommended by the New Hampshire Association of Special Education Administrators.

(4) Two parents of school-age children, one of whom shall be the parent of a child with an educational disability.

(5) One member from the business community, who shall be associated with the School to Work Initiative.

(6) One school business official, recommended by the New Hampshire Association of School Business Officials.

II. The commission shall elect a chairperson from among its membership and shall form subcommittees necessary to perform its duties. The chairperson shall determine the frequency of meetings at its first meeting.

III. The members of the commission shall serve without compensation, provided that legislative members of the commission shall receive mileage at the legislative rate while attending to the duties of the com-

mission, and provided that the parent members of the commission shall be reimbursed for travel expenses associated with their duties on the commission.

IV. In order to ensure that all students are provided an adequate education, the duties of the commission shall be as follows:

(a) Determine and recommend the costs of an adequate education for all students in New Hampshire by determining and calculating adjustments for individual school districts based on yearly inflation, cost of living variances, diseconomies of scale, transportation variability, demographics, including for school districts with a disproportionate number of students who are economically disadvantaged or have educational disabilities, and such other factors as deemed relevant.

(b) Determine and recommend the amount of state aid, including building aid, to be distributed to cities and towns based upon the cost of an adequate education as set forth in subparagraph (a) and the method for distributing the state aid.

(c) Recommend changes in policy and procedure in the areas of educational improvement and accountability.

(d) Recommend interim and permanent processes to ensure adequate planning and implementation at the local and state level of special education and educationally related services, including planning for and development, on an interagency basis, of local school based options for pupils who have been placed in alternative or separate schools who could be placed in appropriate less restrictive options if available.

V. The commission shall be divided into the following policy subcommittees: adequacy and cost, educational improvement and accountability, and special education funding.

VI. The commission shall report its findings and recommendations no later than December 1, 2000. The report shall include, for each recommendation, proposed implementation schedules with timelines, specific steps, agencies and persons responsible, and resources needed. Where feasible, all plans, measures and initiatives shall be proposed as legislation or regulation so that they will have the force of law. All recommendations and plans shall be designed to be fully implemented no later than September 1, 2004.

VII. The department of justice, department of revenue administration, department of education, and department of health and human services shall provide the commission with assistance.

26 Appropriation. The sum of \$150,000 for the fiscal year ending June 30, 2000, is hereby appropriated for the purposes of the commission established in RSA 198:49 as inserted by section 25 of this act. This sum shall be nonlapsing until June 30, 2001. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

27 New Subparagraph; Special Education; Catastrophic Aid Payments. Amend RSA 186-C:18, III by inserting after subparagraph (c) the following new subparagraph:

(d) For each fiscal year beginning with the fiscal year ending June 30, 2000, \$2,000,000 shall be appropriated from the education trust fund established in RSA 198:39 to the department of education to assist those school districts which, under rules adopted by the state board of education, qualify for emergency assistance in meeting special education catastrophic costs pursuant to this section.

28 Reference Added. Amend RSA 189:1-d, IV to read as follows:

IV. "Average daily membership in residence" means the average daily membership of students enrolled in public schools within the district or



students whose tuition is being paid by the district, ***pursuant to RSA 186-C:10***, to another approved public or private school for a given school district in a given school year.

29 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:7, I to read as follows:

I. If a cooperative school district was organized prior to July 1, 1963, during the first 5 years after the formation of a cooperative school district each preexisting district shall pay its share of all capital outlay costs and ***all*** operational costs ***in excess of the amount determined necessary to provide an adequate education under RSA 198:40*** in accordance with either one of the following formulas as determined by a majority vote of the cooperative district meeting:

30 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:14, I(b) to read as follow:

(b) The commissioner of revenue administration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum, in accordance with RSA 21-J:35, which may be used as a setoff against the amount appropriated when it appears to the commissioner of revenue administration such adjustment is in the best public interest. ***The commissioner of revenue administration shall apply the total amount of all adequate education grants received pursuant to RSA 198:42.***

31 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:18, III(e) to read as follows:

(e) The method of apportioning ~~the~~ ***all*** operating expenses ***in excess of the amount determined necessary to provide an adequate education under RSA 198:40***, of the cooperative school district among the several preexisting districts and the time and manner of payment of such shares. Home education pupils who do not receive services from the cooperative school district, except an evaluation pursuant to RSA 193-A:6, II, shall not be included in the average daily membership relative to apportionment formulas.

32 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:18, IX to read as follows:

IX. The organization meeting of a cooperative school district shall be called to order by the chairperson of the cooperative school district planning board, or by the clerk-treasurer thereof, who shall serve as temporary chairperson for the first order of business which shall be the election of a moderator and of a temporary clerk, by ballot, who shall be qualified voters of the district. From and after the issuance of the certificate of formation by the board to the date of operating responsibility of the cooperative school district, such district shall have all the authority and powers of a regular school district for the purposes of incurring indebtedness, for the construction of school facilities and for such other functions as are necessary to obtain proper facilities for a complete program of education. When necessary in such interim, the school board of the cooperative school district is authorized to prepare a budget and call a special meeting of the voters of the district, which meeting shall have the same authority as an annual meeting, for the purpose of adopting the budget, making necessary appropriations, and borrowing money. Whenever the organization meeting is held on or before April 20 in any calendar year, no annual meeting need be held in such calendar year. Sums of money raised and appropriated at the organization meeting or any interim meeting prior to the first annual meeting shall be forthwith certified to the commissioner of revenue administration and the state department of education upon blanks prescribed and provided by the

commissioner of revenue administration for the purpose, together with a certificate of estimated revenues, so far as known, and such other information as the commissioner of revenue administration may require. The commissioner of revenue administration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum which may be used as a setoff against the amount appropriated when it appears to the commissioner such adjustment is in the best public interest. ***The commissioner of revenue administration shall apply the total amount of all adequate education grants received pursuant to RSA 198:40 as a setoff against the amount appropriated.*** The commissioner of revenue administration shall certify to the state department of education the total amount of taxes to be raised for said cooperative school district and the state department of education shall determine the proportional share of said taxes to be borne by each preexisting school district and notify the commissioner of revenue administration of its determination. Upon certification by the commissioner of revenue administration the selectmen of each town shall seasonably assess the taxes as provided by law. The selectmen shall pay over to the treasurer of the cooperative district such portion of the sums so raised as may reasonably be required according to a schedule of payments needed for the year as prepared by the treasurer and approved by the cooperative school board, but no such payment shall be greater in percentage to the total sum to be raised by one local district than that of any other local district comprising such cooperative school district.

33 Reference Change. Amend RSA 193:1, I(c) to read as follows:

(c) The relevant school district superintendent has excused a child from attendance because the child is physically or mentally unable to attend school, or has been temporarily excused upon the request of the parent for purposes agreed upon by the school authorities and the parent. Such excused absences shall not be permitted if they cause a serious adverse effect upon the student's educational progress. Students excused for such temporary absences may be claimed as full-time pupils for purposes of calculating state aid under RSA 186-C:18 and ***[RSA 198:27-37] adequate education grants under RSA 198:41.***

34 Reimbursement Anticipation Notes; Version Effective Until July 1, 1999. Amend RSA 198:20-d to read as follows:

198:20-d Reimbursement Anticipation Notes. Notwithstanding any other provision of law to the contrary, a school district may incur debt in anticipation of reimbursement under RSA 186-C:18 ***and under RSA 198:42.*** The governing body, after receiving authorization for borrowing from the legislative body, may elect to recognize the proceeds of the borrowing as revenue for property tax rate setting purposes by providing written notification, prior to September 1, to the commissioner of the department of revenue administration stating the specific amount of borrowing to be recognized as revenue.

35 Reimbursement Anticipation Notes; July 1, 1999 Version. Amend RSA 198:20-d to read as follows:

198:20-d Reimbursement Anticipation Notes. Notwithstanding any other provision of law to the contrary, a school district may incur debt in anticipation of reimbursement under RSA 186-C:18 ***and under RSA 198:42.*** The governing body, after notice and public hearing, may elect to borrow such funds and to recognize the proceeds of the borrowing as revenue for property tax rate setting purposes by providing written ***notification, prior to September 1,*** to the commissioner of the de-

partment of revenue administration stating the specific amount of borrowing to be recognized as revenue. Any borrowing under this section shall be exempt from the provisions of RSA 33, relative to debt limits.

36 Sweepstakes. RSA 284:21-j is repealed and reenacted to read as follows:

284:21-j Establishment. The state treasurer shall credit all moneys received from the sweepstakes commission, and interest received on such moneys, to a special fund from which the treasurer shall pay all expenses of the commission incident to the administration of this subdivision and RSA 287-E. Any balance left in such fund after such expenses are paid shall be deposited in the education trust fund established under RSA 198:39.

37 Transition. As of July 1, 1999, all funds, from any source derived, which would be distributed as foundation aid shall be deposited in the education trust fund under RSA 198:39, including the \$62,000,000 appropriated under 1998, 389:16, II.

38 Removing Reference to Foundation Aid. Amend RSA 198:21, V to read as follows:

V. No pupil counted by any school district for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be ~~included in average daily membership for the purposes of foundation aid or~~ counted for the purposes of grants pursuant to RSA 198:22.

39 Removing Reference to Foundation Aid. Amend RSA 198:22, V to read as follows:

V. No pupil counted by any school for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be ~~included in average daily membership for the purposes of foundation aid or~~ counted for the purpose of grants pursuant to RSA 198:21.

40 Payment in Lieu of Taxes. Amend RSA 227-H:17 to read as follows:

227-H:17 Payment in Lieu of Taxes. The commissioner of revenue administration shall adopt rules, pursuant to RSA 541-A, relative to forms for application to the commissioner of revenue administration for payment for lost taxes. ~~[In any year in which no state tax is levied,]~~ Any town in which national forest lands and land held by the state for operation and development as state forestland, as defined by the department for the purposes of this section, are situated, whether acquired by gift, devise, purchase, or in any other manner, may apply, by its selectmen, to the commissioner of revenue administration on forms provided by the commissioner, annually before September 1, for the payment of an amount not exceeding the taxes for all purposes which such town might have received from taxes on such lands in such year had such lands been taxable. In the event that the amount appropriated in any biennium shall be insufficient for the purposes under this section, then the towns entitled to benefits under this section shall be reimbursed proportionately, unless otherwise subsequently ordered by the legislature.

41 Special Transition Rules. The following special transition rules shall apply to the implementation of the uniform education property tax established by sections 4-44 of this act in the first fiscal year following enactment:

I. "Total equalized value" as defined in RSA 21-J:3, XIII shall be based upon the amounts reported for the 1997 tax year as determined by the commissioner of revenue administration pursuant to RSA 21-J:3, XIII.



II. For the school year 1999/2000, the adequate education grant determined in RSA 198:41 shall be distributed to each municipality's school district or districts from the education trust fund in 4 payments as follows:

(a) On July 1, 1999, and September 1, 1999, 1/8 the total adequate education grant;

(b) On January 1, 2000, and April 1, 2000, 3/8 the total adequate education grant. The commissioner of revenue administration shall certify the amount of each grant to the state treasurer and direct the payment thereof to the municipality's school district or districts. When a payment of a grant is made to a school district, the municipality on whose behalf the payment is made, shall receive notification from the state treasurer of the amount of the payment made to its school district or districts..

III. Notwithstanding any other provision of law, the commissioner of revenue administration, for the April 1, 1999 tax year, shall issue the warrants required by RSA 76:8 on or before 30 days after the effective date of this act.

IV. Notwithstanding any other provision of law, the commissioner of revenue administration shall determine the amount of the adequate education grant for each municipality pursuant to RSA 198:41 for the 1999/2000 school year on or before 30 days after the effective date of this act.

V. For the property tax year ending March 31, 2000, municipalities which have adopted semi-annual collection of taxes shall assess the semi-annual property taxes in accordance with the provisions of RSA 76:15-a.

VI. For the property tax ending March 31, 2000, notwithstanding the provisions of RSA 76:11-a, I, the governing body of any municipality may choose to combine the local and state education property tax rates on the tax bill.

VII. Notwithstanding the provisions of RSA 80:52-a, any overpayment of property tax resulting from the implementation of this act for the tax year ending March 31, 2000 may, at the option of the governing body, be refunded to the property owner or carried forward as a credit toward the amount of taxes assessed against said property for the tax year ending March 31, 2001. Any amounts carried forward shall accrue interest at the rate prescribed in RSA 76:17-a.

VIII. For the school year ending June 30, 2000, adequate education grant moneys received by a school district pursuant to RSA 198:42 shall not be considered unanticipated funds under RSA 198:20-b. School districts may appropriate additional sums for the school year ending June 30, 2000 in accordance with the provisions of 1999, 2.

42 Special Provision for Foundation Aid. Notwithstanding the repeal pursuant to section 44 of this act of RSA 198:27-37, relative to foundation aid and alternative foundation aid, the payment of foundation aid to be made in April 1999 pursuant to RSA 198:31 before such section is repealed, shall be calculated by the department of education and distributed to the recipients as if such repeal had not occurred.

43 Severability. If any provision of this uniform education property tax enacted in sections 4-44 of this act or the application thereof to any person or circumstance is deemed invalid, the invalidity does not affect the other provisions or applications of this act which can be given effect without the invalid provisions or applications and to this end the provisions of this act are severable.

44 Repeal. The following are repealed:

I. RSA 78:20, relative to the applicability of the tobacco tax.

II. RSA 78-B:10-a, relative to the real estate transfer questionnaire.

III. RSA 83-D, relative to the tax on nuclear station property.

IV. RSA 21-J:3, XXIII, relative to the commissioner of revenue administration's duty to determine local per capita income for purposes of foundation aid.

V. RSA 21-J:13, XI, relative to the form and content of the real estate transfer questionnaire.

VI. RSA 194-B:11, VIII, relative to foundation aid in relation to charter and open enrollment schools.

VII. RSA 198:1-3, relative to required annual district property taxes.

VIII. RSA 198:15-i-RSA 198:15-q, relative to kindergarten incentive program, kindergarten aid and alternative kindergarten programs.

IX. RSA 198:27-37, relative to foundation aid and alternative foundation aid.

45 Capital Gains; Interest and Dividends Tax; Who Taxable. Amend RSA 77:3 to read as follows:

77:3 Who Taxable.

I. Taxable income is that income received from interest [~~and~~], dividends, **and net capital gains** during the tax year prior to the assessment date by:

(a) Individuals who are inhabitants or residents of this state for any part of the taxable year whose **net gains from sales of capital assets** and gross interest and dividend income from all sources exceeds [~~\$2,400~~] **\$3,000** during that taxable period.

(b) Partnerships, limited liability companies, associations, and trusts, the beneficial interest in which is not represented by transferable shares, whose **net gains from sales of capital assets** and gross interest and dividend income from all sources exceeds [~~\$2,400~~] **\$3,000**, during the taxable year, but not including a qualified investment company as defined in RSA 77-A:1, XXI, or a trust comprising a part of an employee benefit plan, as defined in the Employee Retirement Income Security Act of 1974, section 3.

(c) Fiduciaries deriving their appointment from a court of this state whose **net gains from sales of capital assets** and gross interest and dividend income from all sources exceeds [~~\$2,400~~] **\$3,000** during the taxable year.

(d) Net capital gains from the sale of real property located in New Hampshire received by:

(1) Individuals who are not inhabitants or residents of this state for any part of the taxable year whose net gains from the sale of real property within this state exceeds \$3,000, during the taxable year.

(2) Partnerships, corporations, limited liability companies, associations, and trusts, whose net gains from the sale of real property within this state exceeds \$3,000, during the taxable year, but not including a qualified investment company as defined in RSA 77-A:1, XXI, or a trust comprising a part of an employee benefit plan, as defined in the Employee Retirement Income Security Act of 1974, section 3.

(3) Fiduciaries deriving their appointment from a court of another state whose net gains from the sale of real property within this state exceeds \$3,000 during the taxable year.

II. No person shall be subject to tax under RSA 77 solely due to its holding an ownership interest in a qualified investment company as defined in RSA 77-A:1, XXI.

46 New Paragraph; Sales of Capital Assets Taxable; Interest and Dividends Tax. Amend RSA 77:4 by inserting after paragraph VI the following new paragraph:

VII. Net gains from the sale or exchange of capital assets which shall be the net capital gain as determined for federal income tax purposes, after due allowance for losses and holding periods, from sales or exchanges of capital assets or assets treated as capital assets, other than notes, bonds or other obligations of the state of New Hampshire or any of the political subdivisions thereof, or its or their respective agencies or instrumentalities, or from transactions or events taxable to the taxpayer as such sales or exchanges, and being the net amount includable in the taxpayer's adjusted gross income, with respect to all such sales, exchanges, transactions, or events, under the provisions of the United States Internal Revenue Code in effect for the taxable year.

47 New Section; Deduction for Gains from Non-New Hampshire Real Property Subject to Tax In Another State. Amend RSA 77 by inserting after section 4-f the following new section:

77:4-g Deductions for Gains From Non-New Hampshire Property Subject to Tax in Another State. A taxable person shall be allowed to deduct from the sum of the income taxable under this chapter an amount equal to the net capital gains received from the sale of real property located outside of New Hampshire, but only to the extent that such net capital gains is subject to tax by another state.

48 Exemptions; Interest and Dividends Tax. Amend RSA 77:5 to read as follows:

77:5 Exemptions. Each taxpayer shall have the following exemptions:

I. ***Taxable*** income of [~~\$2,400~~] ***\$3,000***.

II. An additional [~~\$1,200~~] ***\$2,000*** if either or both taxpayers are 65 years of age or older on the last day of the tax year.

III. An additional [~~\$1,200~~] ***\$2,000*** if either or both taxpayers are blind.

IV. An additional [~~\$1,200~~] ***\$2,000*** if either or both taxpayers are disabled, unable to work, and have not yet reached their sixty-fifth birthday.

V. All income from the sale of the taxpayer's principal residence to the extent such income is excluded from taxation under section 121 of the United States Internal Revenue Code in effect for the taxable year.

VI. All income from gains from the sale of capital assets taxed under RSA 77-A.

49 Reference to Capital Gains Added. Amend RSA 77:5-a to read as follows:

77:5-a Married Taxpayers; Joint Returns. A married taxpayer may claim the exemptions provided in RSA 77:5 for both self and spouse, regardless of the ownership of the income from ***net capital gains***, interest or dividends, provided that both husband and wife file a joint return.

50 Repeal. RSA 77:4-c, relative to sale or exchange of transferable shares not taxable, is repealed.

51 Income From Trusts. Amend RSA 77:10 to read as follows:

77:10 Income from Trusts.

I. The income received by estates held by trustees, any one of whom is an inhabitant of this state, or has derived his appointment from a court of this state, shall be subject to the taxes imposed by this chapter, except that income received by estates held by trustees treated as grantor trusts under section 671 of the United States Internal Revenue Code shall be included in the return of their owners, to the extent that the persons to whom the income from the trust is payable, or for whose benefit it is accumulated, are inhabitants of this state.

***II. Notwithstanding the provisions of paragraph I, the total amount of net capital gains received from the sale of real property located in New Hampshire shall be subject to the taxes imposed by this chapter.***



52 Partnerships and Limited Liability Companies. Amend RSA 77:14 to read as follows:

77:14 Partnerships and Limited Liability Companies.

**I.** Partnerships and limited liability companies having a usual place of business in this state, any member of which is an inhabitant thereof, shall be subject to taxes imposed by this chapter. If any of the members of the partnership or limited liability company are not inhabitants of this state only so much of the income thereof as is proportionate to the aggregate interest of the partners or members who are inhabitants of this state in the profits of the partnership or limited liability company shall be taxed.

**II.** *Notwithstanding the provisions of paragraph I, the total amount of net capital gains received from the sale of real property in New Hampshire shall be subject to the taxes imposed by this chapter.*

53 Business Profits Tax; Rate Increased. Amend RSA 77-A:2 to read as follows:

77-A:2 Imposition of Tax. A tax is imposed at the rate of [7] 8 percent upon the taxable business profits of every business organization.

54 Business Enterprise Tax; Rate Increased; Super Majority to Increase Tax Deleted. Amend RSA 77-E:2 to read as follows:

77-E:2 Imposition of Tax. A tax is imposed at the rate of [~~1/4~~] 1/2 of one percent upon the taxable enterprise value tax base of every business enterprise. [~~A 2/3 majority of those present and voting of each house of the general court shall be necessary to increase the tax rate under this section.~~]

55 Definitions; Meals and Rooms Tax; Operator. RSA 78-A:3, IV is repealed and reenacted to read as follows:

IV. "Operator" means any person operating a hotel, charging for a taxable meal, or receiving gross rental receipts, whether as owner or proprietor or lessee, sublessee, mortgagee, licensee, or otherwise.

56 New Paragraphs; Meals and Rooms Tax; Motor Vehicle Rental; Definitions. Amend RSA 78-A:3 by inserting after paragraph XIII the following new paragraphs:

XIV. "Motor vehicle" means a self-propelled vehicle designed to transport persons or property on a public highway, including a van or jeep. The term does not include the following:

- (a) A device moved only by human power;
- (b) A device used exclusively on stationary rails or tracks;
- (c) Road-building machinery; or
- (d) A mobile office.

XV. "Rental agreement" means an agreement by the owner of a motor vehicle to provide, for not longer than 180 days, the exclusive use of that motor vehicle to another for consideration.

XVI. "Gross rental receipts" means value received or promised as consideration to the owner of a motor vehicle for rental of the vehicle, but does not include:

- (a) Separately stated charges for insurance;
- (b) Charges for damages to the motor vehicle occurring during the rental agreement period;
- (c) Separately stated charges for motor fuel sold by the owner of the motor vehicle.

XVII. "Owner of a motor vehicle" means a person named in the certificate of title as the owner of the vehicle or a person who has the exclusive use of a motor vehicle by reason of rental and holds the vehicle for re-rental.

XVIII. "Department" means the department of revenue administration.

XIX. "Renter" means any person who, for consideration paid to another, is provided a vehicle under a rental agreement.

57 Meals and Rooms Tax; Licenses Required; Penalty. Amend RSA 78-A:4 to read as follows:

78-A:4 Licenses Required; Penalty.

I. Each operator shall register with the department the name and address of each place of business within the state where [he] *it* operates a hotel [or], sells taxable meals, *or rents motor vehicles*. The operator shall pay \$5 for each registration, upon receipt of which the department shall issue a license for each place in such form as it determines, attesting that the registration has been made. The license expires on June 30 in each odd-numbered year unless sooner revoked or suspended by the department. The license shall be conspicuously posted in a public area upon the premises to which it relates.

II. No person shall engage in serving taxable meals [or], renting rooms, *or renting motor vehicles* without first obtaining the license required by this section. The license is nonassignable and cannot be transferred. Any person who fails to register or obtain a license as provided in this section shall be subject to the penalty provisions of RSA 21-J:39.

58 New Paragraph; Tax Imposed on Motor Vehicle Rentals. Amend RSA 78-A:6 by inserting after paragraph II the following new paragraph:

II-a. A tax of 8 percent is imposed upon the gross rental receipts of each rental.

59 Meals and Rooms Tax; Collection of Tax. Amend RSA 78-A:7, I to read as follows:

I. The operator shall either state the amount of the tax to each occupant [or], purchaser of a meal, *or renter*, or state that the tax is included in the price of the occupancy [or], meal *or gross rental receipts received*. The operator shall demand and collect the tax from the occupant [or], purchaser, *or renter*. The occupant [or], purchaser, *or renter* shall pay the tax to the operator. If the tax is included in the price of the meal [or], occupancy, *or gross rental receipts received*, upon request the operator shall state to the purchaser [or], occupant, *or renter* the amount of the tax.

60 Meals and Rooms Tax; Collection of Tax. Amend RSA 78-A:7, IV to read as follows:

IV. In lieu of keeping detailed records of taxes collected, and in lieu of payment of the taxes collected under this chapter, an operator may, in writing, elect to compute the amount of taxes due at [7] 8 percent of the total taxable rent [or], charge for meals, *or gross rental receipts* received by [him] *it*, or both, exclusive of the taxes collected on such rents [and], charges, *and gross rental receipts*. If this election is made, the operator may not change the method of computing taxes without the written consent of the department. Any balance of the tax remaining in possession of the operator may be retained by [him] *it*.

61 Transfer Tax; Rate. RSA 78-B:1, I(b) is repealed and reenacted to read as follows:

(b) The rate of the tax is \$.75 per \$100, or fractional part thereof, of the price or consideration for such sale, grant or transfer; except that where the price or consideration is \$4,000 or less there shall be a minimum tax of \$20. The tax imposed shall be computed to the nearest whole dollar.

62 Tobacco Settlement Funds. Beginning with the fiscal year ending June 30, 1999, \$30,000,000 of funds received each fiscal year by the state of New Hampshire as a result of the settlement in 1998 of liti-

gation against tobacco companies shall be deposited in the education trust fund established in RSA 198:39. The governor is authorized to draw a warrant for said sums out of funds received by the state from settlement of the tobacco litigation.

63 Position Established; Appropriations.

I. To carry out the financial and educational reporting requirements of this act, there are hereby established within the department of education 6 full-time permanent positions as follows:

- (a) One systems development specialist IV, labor grade 25.
- (b) One audit administrator, unclassified group L.
- (c) Three auditors, labor grade 23.
- (d) One administrative assistant, labor grade 15.

II. The sum of \$600,000 is hereby appropriated to the department of education for the biennium ending June 30, 2001, to fund the positions created in paragraph I, including salary, benefits, rent, supplies, and travel. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

III. To carry out the administrative requirements of this act, there is hereby established within the department of revenue administration 2 full-time permanent positions of systems development specialist IV, labor grade 25, and a systems development specialist III, labor grade 22.

IV. The sum of \$2,700,000 for the biennium ending June 30, 2001, is hereby appropriated to the department of revenue administration to fund the costs necessary to implement this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

V. The sum of \$100,000 for the biennium ending June 30, 2001, is hereby appropriated to the department of education to fund the costs necessary to upgrade school districts' computer systems to carry out the reporting responsibilities of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

VI. The sum of \$4,220,000 for the fiscal year ending June 30, 2000 is hereby appropriated from the education trust fund created under RSA 198:39 to the department of revenue administration to reimburse municipalities for the increased administrative costs necessary to carry out the financial purpose of this act in accordance with part I, article 28-a of the New Hampshire constitution. The amount to be distributed to each municipality shall be determined according to the proportion of state property tax assessed by such municipality to the total state property tax assessed. Such amount shall be distributed on or before September 30, 1999.

64 Tax Equity and Efficiency Commission.

I. As new taxes are proposed to replace the interim funding proposed in this act for funding public education in accordance with the supreme court's Claremont II decision, it is important that a review of the tax structure and policy of the state of New Hampshire be completed to insure a fair, proportional, responsible, efficient, and uncomplicated tax structure. Therefore the general court hereby establishes a tax equity and efficiency commission to undertake a comprehensive review of all taxes currently imposed on the citizens of New Hampshire, to consider the effect of all new taxes and revenue sources proposed, and to recommend adjustments to or repeal of certain taxes which may unfairly burden certain segments of the citizenry.

II.(a) There is established a 9 member tax equity and efficiency commission. The members of the commission shall be as follows:



(1) Three house members, no more than 2 of whom shall be from the same political party, appointed by the speaker of the house.

(2) Three senators, no more than 2 of whom shall be from the same political party, appointed by the senate president.

(3) Three public members, appointed by the governor.

(4) The commissioner of the department of revenue administration, or designee..

(5) The commissioner of the department of education, or designee.

(6) The state treasurer, or designee.

(b) Committee members designated in subparagraph II(a)(4)-(6) shall be nonvoting members.

(c) Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

### III. The commission shall:

(a) Review each state and local tax paid by citizens of New Hampshire, with regard to who pays each tax, its effect on certain segments of the population, its effects on the economy, jobs, family and community, and whether it duplicates other taxes.

(b) Review each tax or revenue source, including but not limited to those proposed in the 1999 and 200 legislative session, under the same criteria as required by paragraph I for review of existing taxes.

(c) Make recommendations o repealing or adjusting existing taxes, and the creation of new taxes or revenue sources to fund the state obligation.

(d) Review all state grants and revenue sharing programs to determine if any can be supported by the local tax or substituted for the school tax portion if the state absorbs the responsibility for funding public education, grades K-12.

(e) Make recommendations for a complete list of taxes or other revenue sources which establish a new tax policy for this state.

IV. The members of the commission shall elect a chairperson, vice-chairperson, and clerk from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 30 days of the effective date of this section.

V. Reports. The commission shall submit interim reports of its findings and recommendations to the speaker of the house, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before December 1, 1999 and April 1, 2000. The commission shall submit its final report and any recommendations for proposed legislation to the senate president, the speaker of the house, the senate clerk, the house clerk, the governor, and state library on or before December 1, 2000.

65 Appropriation. The sum of \$500,000 is hereby appropriated to the tax equity and efficiency commission established in section 64 of this act for the biennium ending June 30, 2001, for purposes of paying costs associated with its study and the hiring of consultants to provide analysis of all proposed and current state revenue sources. The governor is authorized to draw a warrant for said sum out of any moneys in the treasury not otherwise appropriated.

66 Severability. If any provision of this act or the application thereof to any person or circumstance is deemed invalid, the invalidity does not affect the other provisions or applications of the act which can be given effect without the invalid provisions or applications and to this end the provisions of this act are severable.

## 67 Effective Date.

I. Sections 53-54 of this act shall take effect upon its passage, and shall apply to returns and taxes and reports due on account of taxable periods beginning on or after January 1, 1999.

II. Sections 45-52 and 55-61 of this act shall take effect July 1, 1999.

III. Section 35 of this act shall take effect July 1, 1999 at 12:01 a.m.

IV. The remainder of this act shall take effect upon its passage and shall apply to property taxes due for the tax year ending March 31, 2000.

**1999-0965s**

## AMENDED ANALYSIS

## I. This bill:

(a) Increases the rate of the tobacco tax.

(b) Establishes a uniform education property tax to provide funding for an adequate education.

(c) Taxes capital gains under the interest and dividends tax.

(d) Increases the rate of the business profits tax.

(e) Adds a tax on rental of motor vehicles.

(f) Designates \$30,000,000 annually of tobacco settlement funds received by the state for education funding.

(g) Makes appropriations to the department of education and the department of revenue administration for the purposes of the bill.

## II. This bill:

(a) Establishes an educational adequacy and education financing reform commission.

(b) Establishes a system for calculating and disbursing state grants for educational adequacy.

(c) Appropriates funds to the commission for the purposes of this bill.

(d) Provides for certain catastrophic special education payments.

III. The bill also establishes a tax equity and efficiency commission and makes an appropriation to the commission.

SENATOR LARSEN: Mr. President and members of the Senate, I rise to present the floor amendment to HB 117-FN which is identical to the amendment to HB 112 which was adopted and in your Senate Journal on April 20. If you open up your Senate Journal notebooks to the top of Senate Journal #14. We are saving trees, by not handing out yet another document, you have all of these in your possession, but rather than photocopy them again, open Senate Journal #14 page 303. Where you see the amendment to HB 112. The language that I hold, which is the floor amendment to HB 117, is identical to the amendment to HB 112, except that it incorporates the floor amendment which we just adopted before the recess. The floor amendment, as you recall, puts the commercial property tax rate at \$8 per thousand and allows a homestead exemption of 25 percent, thereby making the property tax on primary homes at \$6 per thousand and commercial and second homes at \$8 per thousand, otherwise it is identical to what you see as HB 112 on page 303. All of you will remember that this is a \$6 on primary homes in towns that are not already paying \$6. A commercial property tax rate of \$8 per thousand in towns that are not already paying \$8 per thousand for their school tax. It includes a 12-cent cigarette tax, the extension of rooms and meals to rental cars, and the business property tax at 8 percent, and the business enterprise tax at .5 percent. It includes the capital gains with increased interest and dividends deductions, the real estate transfer tax increased at \$2.50. The tobacco settlement at \$30 million and existing state aid to education so that the total is...I am sorry, I don't have the

exact total, I believe it is \$846 million under that plan. So what you have before you is the floor amendment to HB 117, which in fact will allow us to go to Conference Committee, we hope, in the morning. We have the opportunity here. We have seen the House action, the House is not that different from the Senate's version. There are means within which we can negotiate and work and come to some agreement in a timely way so that we can reach an agreement by April 30, and keeping the schools open and keeping the summer programs open for the special needs children, keeping maintenance programs on schedule, allowing construction to begin on buildings that have already been approved, allowing bids to go out. This is our opportunity to go to a Committee of Conference. I urge all of you to join me in supporting the floor amendment to HB 117. Thank you.

SENATOR F. KING: Senator Larsen, there was some discussion earlier in the day about some new-found money as it relates to the interest and dividends tax?

SENATOR LARSEN: Capital gains.

SENATOR F. KING: Capital gains, what is that new amount which we are using from the budget?

SENATOR LARSEN: The understanding that we had is that it was a \$30 million increase in estimated revenues from the capital gains tax at the rate which we approved last April 20.

SENATOR F. KING: Does that mean that it is over \$100 million?

SENATOR LARSEN: It is \$102 million the last that I heard.

SENATOR F. KING: So it is \$102 million of capital gains tax?

SENATOR LARSEN: By the end of the day we will also have some final confirmation numbers exactly, hopefully to the penny.

SENATOR F. KING: Thank you.

SENATOR SQUIRES: When I came here, Mr. President, I was determined to do a number of things. I would try to be forthright in my votes and do what I think is right. I would like to raise issues and I was determined not to be an obstruction. I have tried not to be. I believe that I have not been an obstruction. If I thought that this amendment was not going to pass, I might act differently, but I am free of that obligation. I can't go to my constituents and make the case for a \$100 million in capital gains. I have a company in Hollis "Transparent Language" people have invested funds in that company to get it started. They hope that it can eventually be taken public, and they expect to have a return on their capital. If we do this, we are going to chill that opportunity. So I can't vote for it at this point. I have always tried to explain in some rational way why I vote and this is it. Thank you.

SENATOR KLEMM: I also rise because I cannot support this. We have heard stories today about trying to find the ways to raise the adequacy figure and lower the property tax rate. There is a way to do that, we all know. I represent a community that has stepped forward and voted in favor of gaming. But what this bill would do would be to increase the taxes on the businesses in that community, and I cannot support that. We have the opportunity here to lower that property tax rate to \$5.60, but again, I know that I don't have the votes, but if anyone wants to come and talk about it, the subject is still alive as far as I am concerned, but I will not be voting in favor of this bill.

**Floor Amendment adopted.**



Senators Gordon and F. King are in opposition to the floor amendment on HB 117.

**Question is on ordering to third reading.**

**A roll call was requested by Senator Roberge.**

**Seconded by Senator Krueger.**

**The following Senators voted Yes: Fraser, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Hollingworth, Cohen.**

**The following Senators voted No: F. King, Gordon, Johnson, Roberge, Squires, Krueger, Brown, Klemm.**

**Yeas: 14 - Nays: 8**

**Paired Votes: Senators Francoeur and Wheeler.**

**Adopted.**

**Ordered to third reading.**

### **HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment to the following entitled House Bill sent down from the Senate:

**HB 117-FN-A-L**, establishing a uniform education property tax and utility property tax, increasing the business profit and real estate transfer taxes, and including other sources of revenue to provide funding for an adequate public education and making an appropriation therefor. And requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Donnalee Lozeau, Gene Chandler, Neal Kurk, David Hess, Peter Burling.

**Alternates:** Mary Jane Wallner, Jeb Bradley

### **SENATE ACCEDES TO HOUSE REQUEST**

**HB 117-FN-A-L**, establishing a uniform education property tax and utility property tax, increasing the business profit and real estate transfer taxes, and including other sources of revenue to provide funding for an adequate public education and making an appropriation therefor.

Senator Hollingworth moved to accede to the House request for a committee of conference.

**Adopted.**

The President, on the part of the Senate, has appointed as said members of committee of conference:

**SENATORS:** Hollingworth, Fraser, Larsen, McCarley and D'Allesandro  
**Alternates:** Blaisdell, Klemm

Senator Gordon is in opposition to the motion to accede.

**Recess.**

**Out of Recess.**

## ANNOUNCEMENTS RESOLUTION

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time; and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

## LATE SESSION

### Third Reading and Final Passage

**SB 11-FN**, relative to the filing fee for securities in a combined prospectus offered for sale in New Hampshire by a mutual fund.

**SB 24**, extending the application of certain provisions of the child protection act to all children in out-of-home placements.

**SB 47-FN**, relative to compensation for time lost by fish and game conservation officers for injuries received in the line of duty, and restoring certain leave time for a conservation officer injured while on duty on August 19, 1997.

**HB 90**, removing the prohibition on adoption and foster parenting by homosexual persons.

**HB 117-FN-A-L**, establishing a uniform education property tax and a utility property tax, increasing the business profit and real estate transfer taxes, and including other sources of revenue to provide funding for an adequate public education and making an appropriation therefor.

**SB 129-L**, requiring school districts to disclose any reimbursements received to offset special education expenditures.

**SB 134-FN**, relative to medicaid reimbursement rates and dental care.

**SB 145-FN**, relative to state financial aid for state fairs, and making an appropriation therefor.

**SB 170-FN-A**, establishing a parents as teachers pilot program in Sullivan county and making an appropriation therefor.

**SB 176-FN-A**, relative to technology support for individuals and making an appropriation therefor.

**SB 186-FN**, relative to additional cost of living adjustments and increased minimum allowances for certain retired group II members, and relative to requiring spousal acknowledgement of a member's election of an optional retirement allowance.

**SB 187-FN-L**, relative to payment of group health insurance premiums for eligible retired teachers in the New Hampshire retirement system.

**SB 207-FN**, relative to authorizing bonds for the construction and renovation of regional vocational education centers.

**SB 216-FN**, allowing veterans the right to purchase credit in the retirement system for certain service in the armed forces.

**HB 229**, changing the registration fee requirement of the commercial feed law.

**HB 238-FN-A**, allowing the production and sale of American ginseng in the state of New Hampshire and making an appropriation therefor.

**HB 307**, establishing a committee to study the negotiated risk agreements when patients desire to remain in a facility over the recommendations of the department of health and human services.

**HB 358**, relative to the term of office for members of the state board of education.

**HB 418**, relative to accounts and reporting dates of certain funds in the fish and game department.

**HB 520**, relative to an open season for chukar partridge.

Senator Johnson moved that the business of the day being completed, that the Senate now adjourn to the Call of the Chair.

**Adopted.**

**Adjourned to the Call of the Chair.**

*April 29, 1999*

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by Senator Wheeler.

This is from Paul William, "Differences creatably approach provide both sides an opportunity for growth." Another quote is from William James, "If things are ever to move forward, someone must be ready to take the first step and assume the risk of it." Now let us pray:

*Lord, make us instruments of thy peace, where there is hatred, let us sow love. Where there is discord, let us sow harmony and keep us ever mindful of the needs of those whom we are here to serve. Amen*

Senator Brown led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS SUSPENSION OF THE RULES

Senator J. King moved that the rules of the Senate be so far suspended as to allow a Committee of Conference Report not available until today, and without a report in the Senate Calendar.

**Adopted by the necessary 2/3 votes.**

**1999-1019-CofC**

**06/09**

Committee of Conference Report on HB 117-FN-A-LOCAL, an act establishing a uniform education property tax and a utility property tax, increasing the business profit and real estate transfer taxes, and including other sources of revenue to provide funding for an adequate public education and making an appropriation therefor.

**Recommendation:**

That the House recede from its position of nonconcurrency with the Senate amendment, and concur with the Senate amendment, and

That the Senate and House adopt the following new amendment to the bill as amended by the Senate, and pass the bill as so amended:

Amend the bill by replacing all after the enacting clause with the following:



### 1 Purpose; Intent.

I. In December 1997, the New Hampshire supreme court in the Claremont II decision ruled that it is the state's duty to define and provide all New Hampshire's public school students with an adequate education, and further that the manner of raising revenue to pay for an adequate education be through a system of taxation that is proportional in substance and just and reasonable in application.

II. The general court recognizes the inherent imprecision, subjectivity, and difficulty in determining the cost of an adequate education. Numerous complex financial, budgetary, administrative, and educational elements must be in place in order for the state to fully meet the mandates of Claremont II. Those mandates coupled with the policy of the state recognize that an adequate public education is not a static concept removed from the demands of an evolving world. Such an education shall provide all students with an opportunity to acquire the knowledge and skills necessary to prepare them for successful participation in the social, economic, scientific, technological, and civic realities of society, now and in the years to come. The general court has considered that the needed changes are long-term in nature, truly embedded on the local and state level and are both cost and educationally effective. Thoughtful and deliberate planning with the involvement of many sources of expertise is required and therefore in addition to this act the Adequate Education and Education Financing Commission is established.

III. Through the enactment of RSA 193-E, the general court defined an adequate education. The definition grew out of work undertaken in the early 1990's to develop curriculum frameworks which specifically address the importance of establishing and measuring what all New Hampshire students should know and be able to do. The curriculum frameworks were developed with the widespread participation of educators, business people, government officials, community representatives, and parents. They have evolved into a critical component of providing a quality public education to New Hampshire students.

IV. The New Hampshire educational improvement and assessment program ("NHEIAP") tests were developed in conjunction with the curriculum frameworks as a measure of student performance. The general court therefore finds that the NHEIAP tests are a measure of student performance and can be used to develop and implement effective methods for assessing learning and its application. The general court further finds that in determining the cost of a constitutionally adequate education, performance based outcome criteria, specifically the NHEIAP test scores, can be used to identify school districts that are delivering such a constitutionally adequate education. The NHEIAP tests are comprehensive and difficult. Students taking these tests in the third, sixth, and tenth grades are scored on 4 levels of performance: novice, basic, proficient, and advanced. The general court finds that students who score in the basic, proficient, and advanced levels on these state tests are making progress toward achieving the goals set forth in RSA 193-E.

V. There is no single, empirically correct method of establishing the cost of an adequate education. Therefore, after careful consideration and study, the general court selects a methodology for establishing the cost of an adequate education that is a valid and just methodology. The general court finds that school districts that have 40 to 60 percent of students scoring at or above the basic level on the NHEIAP tests are those districts that are meeting the relevant outcome expectations and are providing an adequate education. As such, in determining the cost of an adequate education, the general court includes all school districts with

40 to 60 percent of students scoring at or above the basic level. The general court believes that this range of results provides a reasonable sample of districts that excludes unrepresentative demographic extremes, including but not limited to, parental income and educational levels. The general court finds that those school districts providing an adequate public education in the most cost effective manner are those school districts in the sample group with per pupil base level education costs in the lower half of the selected school districts. Additionally, the cost of an education calculated from performance based outcome criteria includes costs that are not required to provide the curriculum, programs, and services essential for a constitutionally adequate education. Therefore, it is reasonable to adjust this cost downward by a percentage that reflects some administrative, curricular, extra-curricular, and other costs incorporated in the available data. Over time it may be possible to calculate this adjustment with greater precision, however, at this time the general court has used an estimate for this adjustment.

VI. In cities and towns with relatively higher property values, sharp increases in property taxes may cause business failure where fixed costs increase faster than the ability to recoup them. Commercial rental property owners may find themselves locked in by lease provisions that prevent them from recouping tax increases from tenants, resulting in reduced reinvestment in the property, and potential foreclosure or bankruptcy. Also, substantial increases in property tax obligations may cause or permit lenders to foreclose on mortgage notes based on the decreased ability of the borrower to meet the income level required by the lender. Tax capitalization which decreases property values may also cause foreclosures on otherwise performing loans because the regulated lending institution must call the loan to comply with rules and regulations. Therefore a phase-in provision is included herein which is intended to ameliorate these consequences as far as is practicable, and to allow property owners and local governments time to adjust to the new state education property tax enacted herein.

2 New Subparagraph; Education Trust Fund. Amend RSA 6:12, I by inserting after subparagraph (vvv) the following new subparagraph:

(www) Money received under 77-A, RSA 77-E, RSA 78, RSA 78-A, RSA 78-B, RSA 83-F, RSA 198:46, and from the sweepstakes fund, which shall be credited to the education trust fund under RSA 198:39.

3 Gender Reference Change. Amend the introductory paragraph of RSA 21-J:3 to read as follows:

In addition to the powers, duties, and functions otherwise vested by law, including RSA 21-G, in the commissioner of the department of revenue administration, ~~he~~ **the commissioner** shall:

4 Duties of Commissioner. Amend RSA 21-J:3, XIII to read as follows:

XIII. Equalize annually **by March 31** the valuation of the property in the several towns, cities, and unincorporated places in the state **including the value of property exempt pursuant to RSA 72:37, 72:37-b, 72:39-a, 72:62, 72:66, and 72:70** by adding to or deducting from the aggregate valuation of the property in towns, cities, and unincorporated places such sums as will bring such valuations to the true and market value of the property, including the equalized value of property formerly taxed pursuant to the provisions of RSA 72:7; 72:15, I, V, VII, VIII, IX, X, and XI; 72:16; 72:17; 73:26; 73:27; and 73:11 through 16 inclusive, which were relieved from taxation by the laws of 1970, 5:3; 5:8; 57:12; and 57:15, the equalized valuation of which is to be determined by the amount of revenue returned in such year in accordance with RSA 31-A, and by making such adjustments in the value of other property from which the towns,

cities, and unincorporated places receive taxes *or payments in lieu of taxes* as may be equitable and just, so that any public taxes that may be apportioned among them shall be equal and just. *In carrying out the duty to equalize the valuation of property, the commissioner shall follow the procedures set forth in RSA 21-J:9-a.*

5 New Paragraph; Duties of Commissioner. Amend RSA 21-J:3 by inserting after paragraph XXIV the following new paragraph:

XXV. Petition the board of tax and land appeals to issue an order for reassessment of property pursuant to the board's powers under RSA 71-B:16 - 19 whenever the valuation of property for equalization purposes in a particular city, town, or unincorporated place is disproportional to the valuation for equalization purposes in other cities, towns, or unincorporated places in the state.

6 Division of Property Appraisal; Department of Revenue Administration. RSA 21-J:9 is repealed and reenacted to read as follows:

21-J:9 Division of Property Appraisal. There is established within the department the division of property appraisal, under the supervision of a classified director of property appraisal who shall be responsible for the following functions, in accordance with applicable laws:

I. Assisting and supervising municipalities and appraisers in appraisals and valuations as provided in RSA 21-J:10 and RSA 21-J:11.

II. Appraising state-owned forest and recreation land under RSA 227-H and RSA 216-A.

III. Annually determining the total equalized valuation of properties in the cities and towns and unincorporated places according to the requirements of RSA 21-J:9-a.

IV. Preparing a standard appraisal manual which may be used by assessing officials, and holding meetings throughout the state with such officials to instruct them in appraising property.

7 New Section; Equalization Procedure. Amend RSA 21-J by inserting after section 9 the following new section:

21-J:9-a Equalization Procedure. The following procedures shall apply in determining the equalization of property within the cities, towns, and unincorporated places as required by RSA 21-J:3, XIII:

I. The commissioner shall annually conduct a sales-assessment ratio study which shall include arm's length sales or transfers of property that occurred 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made.

II. In determining the arm's length sales or transfers that are included in the sales-assessment ratio study, the commissioner may use a randomly selected sample of such sales and transfers the size of which shall be determined by the total taxable parcels in the city, town, or unincorporated place.

III. If less than 2 percent of the total taxable parcels in a city, town, or unincorporated place has been transferred by an arm's length sale or transfer during the 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made or the commissioner determines the sales are unrepresentative of the property within the municipality, the commissioner may choose one or more of the following options in the order listed:

(a) Include appraisals of any of the taxable property of such city, town, or unincorporated place in the sales-assessment ratio study. Such appraisals shall be based on full and true market value pursuant to RSA 75:1 and shall be performed by department appraisers. The property to be appraised shall be selected by the commissioner.



(b) Include arm's length sales or transfers in the city, town, or unincorporated place, within 2-1/2 years preceding April 1 of the year preceding the tax year for which such equalization is made.

(c) Consider recent equalization ratio activity in adjoining cities, towns, or unincorporated places.

IV. The commissioner may use the inventory of property transfers authorized by RSA 74:18 in determining the equalized value of property and may consider such other evidence as may be available to the commissioner on or before the time the final equalized value is determined.

8 Appraisals of Property for Ad Valorem Tax Purposes. RSA 21-J:11 is repealed and reenacted to read as follows:

21-J:11 Appraisals of Property For Ad Valorem Tax Purposes.

I. Every person, firm, or corporation intending to engage in the business of making appraisals on behalf of a municipality for tax assessment purposes in this state shall notify the commissioner of that intent in writing. No person, firm, or corporation engaged in the business of making appraisals of taxable property for municipalities and taxing districts shall enter into any contract or agreement with any town, city, or other governmental division without first submitting the proposed contract or agreement to the commissioner for examination and approval and submitting to the commissioner evidence of financial responsibility and professional capability of personnel to be employed under the contract.

II. The commissioner, at no expense to the municipality, shall monitor appraisals of property and supervise appraisers as follows:

(a) Assure that appraisals comply with all applicable statutes and rules;

(b) Assure that appraisers are complying with the terms of any appraisal contract;

(c) Review the accuracy of appraisals by inspection, evaluation, and testing, in whole or in part, of data collected by the appraisers; and

(d) Report to the governing body on the progress and quality of the municipality's appraisal process.

III. The commissioner shall adopt rules under RSA 541-A relative to the provisions required of all contracts for appraisal services and the methodology for inspection, evaluation, and testing of data for the purposes of appraisal monitoring.

9 New Paragraph; Reports Required. Amend RSA 21-J:34 by inserting after paragraph XIV the following new paragraph:

XV. A report filed by the assessing officials of each city, town, and unincorporated place shall certify sales-assessment information necessary for the department to conduct the annual sales-assessment ratio study required by RSA 21-J:9-a. This report shall be filed November 30 or 30 days after receipt from the department whichever is later. Municipalities which fail to timely file the report shall pay a penalty to the state in the amount of \$100 for each day that the report is not timely filed.

10 Revenue Sharing. Amend RSA 31-A:4, I to read as follows:

I. Its 1978 distribution under RSA 31-A plus its share under the equalized formula of an annual increase of 5 percent in the previous year's aggregate distribution, through the year 1981, excluding revenue derived from RSA 77-A:20. ***The amount of money which is removed from the formula for deposit in the education trust fund shall not affect the remaining municipal revenue sharing distribution. The same amount distributed to each municipality in fiscal year 1998, excluding the amount apportioned to the school district in the 1998 property tax calculations, shall be distributed to each mu-***

***municipality in fiscal year 1999 and each year thereafter until the legislature revises the formula or provides additional appropriations that will affect the distribution amount.***

11 Board of Tax and Land Appeals; Authority. Amend RSA 71-B:5, II to read as follows:

II.(a) To hear and determine ~~[any]~~ appeals ***by municipalities*** relating to the ~~[equalization of valuation performed]~~ ***equalized valuation of property determined*** by the commissioner of revenue administration pursuant to RSA 21-J:3, XIII. Any ~~[town]~~ ***municipality*** aggrieved by ~~[an]~~ ***its*** equalized valuation as determined by the commissioner of revenue administration must appeal to the board in writing within ~~[30]~~ ***20*** days of ~~[the town's notification]~~ ***notice*** of ~~[the]~~ ***its final*** equalized valuation by the commissioner. ***The board shall hear and make a final ruling on such appeal within 45 days of its receipt by the board. The board's decision on such appeal shall be final pending a decision by the supreme court. Such appeal shall be filed with the clerk of the supreme court within 20 days after the date the decision is mailed by the board to the municipality. The supreme court shall give any appeal under this section priority in the court calendar.***

(b) Decisions by the supreme court on appeals made under subparagraph (a) that are issued prior to September 1 shall be used by the commissioner of revenue administration in determining the taxes to be raised by each municipality.

(c) Decisions by the supreme court on appeals made under subparagraph (a) that are issued after September 1 shall be used by the commissioner of revenue administration in determining the taxes to be raised in the tax year commencing April 1 of the second succeeding year. Any adjustments that need to be made to a municipality's tax rate based on a decision by the supreme court under this subparagraph shall be made by the commissioner of revenue administration in the tax year commencing April 1 of the succeeding year.

12 New Paragraph; Order for Reassessment. Amend RSA 71-B:16, IV to read as follows:

IV. When a complaint is filed with the board alleging that all of the taxable real estate or taxable property in a taxing district should be reassessed or newly assessed for any reason, provided that such complaint must be signed by at least 50 property taxpayers or 1/3 of the property taxpayers in the taxing district, whichever is less[-]; ***or***

***V. When the commissioner of revenue administration files a petition with it pursuant to RSA 21-J:3, XXV.***

13 New Section; Inventory of Property Transfers. Amend RSA 74 by inserting after section 17 the following new section:

74:18 Inventory of Property Transfers.

I. In order to properly equalize the value of property under RSA 21-J:3, XIII, an inventory of property transfers shall be filed with the department of revenue administration and with the municipality where the property is located for each transfer of real estate or interest in real estate. Each form may include the following information:

(a) The buyer and seller's names and post transaction addresses and the name and address of a contact person if the buyer or seller is a trust or corporation.

(b) A description of the exact location of the property by town, street, and the assessor's map, lot, and block number.

(c) The acreage included in the sale.

(d) An accurate description of the property included in the sale, the neighborhood where the property is located, and the type and style of the property sold.

(e) The buyer's ownership interest in the property.

(f) The sale price, date of transfer, and the amount mortgaged.

(g) The description of the type of transfer that has taken place.

(h) The amount of personal property included in the sale price.

(i) Whether the property was previously occupied and whether the property will serve as the buyer's primary residence.

(j) The financing arrangements made to purchase the property to be answered at the option of the buyer.

(k) Whether any concessions were made in the sale.

(l) Whether the property was in current use.

(m) Whether land use taxes were considered in the sale.

(n) The buyer's dated signature certifying that the information indicated on the form is true.

II. The inventory of property transfers required by this section shall be filed with the department of revenue administration and with the municipality where the property is located by the purchaser, grantee, assignee, or transferee, no later than 30 days from the recording of the deed at the register of deeds or transfer of real estate, whichever is later. Persons required to file the inventory of property transfers who willfully fail to file or willfully make false statements on the forms shall be guilty of a violation.

III. No deed, recording a transfer of real estate or any interest in real estate, executed before October 1, 1995, shall be required to comply with this section.

IV. Failure to comply with this section shall not be construed to cloud title.

V. Any information provided to the department or the municipality pursuant to this section shall be exempt from the right-to-know law, RSA 91-A.

14 Education Property Tax. RSA 76:3 is repealed and reenacted to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate of \$6.60 on each \$1000 of the value of taxable property is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F.

15 What Taxes Assessed. Amend RSA 76:5 to read as follows:

76:5 What Taxes Assessed. The selectmen shall seasonably assess all state and county taxes for which they have the warrants of the [state] **commissioner of revenue administration** and county treasurers respectively; all taxes duly voted in their towns; and all school[~~school-house,~~] and village district taxes authorized by law or by vote of any school or village district duly certified to them; and all sums required to be assessed by RSA 33.

16 Commissioner's Warrant. RSA 76:8 is repealed and reenacted to read as follows:

76:8 Commissioner's Warrant.

I. The commissioner of revenue administration shall annually calculate the proportion of education property tax to be raised by each municipality by multiplying the uniform education property tax rate by the total equalized value of all property in the municipality as determined under RSA 21-J:3, XIII, except property taxable under RSA 82 or RSA 83-F.



II. The commissioner shall issue a warrant under the commissioner's hand and official seal for the amount computed in paragraph I to the selectmen or assessors of each municipality at the time of the setting of the tax rate directing them to assess such sum and pay it to the municipality for the use of the school district or districts and, if there is an excess education tax payment due pursuant to RSA 198:46, directing them to assess the amount of the excess payment and pay it to the department of revenue administration for deposit in the education trust fund. Such sums shall be assessed at such times as may be prescribed for other taxes assessed by such selectmen or assessors of the municipality.

III. Municipalities are authorized to assess local property taxes necessary to fund school district appropriations not funded by the education property tax, by distributions from the education trust fund under RSA 198:39, or by other revenue sources.

17 Commissioner's Report. RSA 76:9 is repealed and reenacted to read as follows:

76:9 Commissioner's Report. The commissioner of revenue administration shall report to the governor, the speaker of the house of representatives, the president of the senate, and the commissioner of education each year on or before October 1, a statement of the education property tax warrants to be issued for the tax year commencing April 1 of the succeeding year.

18 Information Required. Amend RSA 76:11-a, I to read as follows:

I. The tax bill which is sent to every person taxed, as provided in RSA 76:11, shall show the rate for municipal, ~~[school]~~ **local education, state education**, and county taxes separately, the assessed valuation of all lands and buildings for which said person is being taxed, and the right to apply in writing to the selectmen or assessors for an abatement of the tax assessed as provided under RSA 76:16. The department of revenue administration shall compute for each town and city the rates which are to appear on the tax bills and shall furnish the required information to the appropriate town or city.

19 Business Profits Tax; Rate Increased. Amend RSA 77-A:2 to read as follows:

77-A:2 Imposition of Tax. A tax is imposed at the rate of [7] **8** percent upon the taxable business profits of every business organization.

20 Business Profits Tax; New Section; Distribution. Amend RSA 77-A by inserting after section 20 the following new section:

77-A:20-a Distribution of Funds.

I. The commissioner shall determine the additional amounts of revenue produced by an increase of one percent in the rate of tax imposed by RSA 77-A:2 for each fiscal year and shall certify such amounts to the state treasurer by October 1 of that year for deposit in the education trust fund established by RSA 198:39.

II. The commissioner shall make quarterly estimates of the amount of additional revenues that will be produced by the increase in tax rate for the next fiscal year and shall certify such amounts to the state treasurer for deposit in the education trust fund established by RSA 198:39. Such estimates shall be certified on June 1, September 1, December 1 and March 1 of each year.

21 Business Enterprise Tax; Rate Increased; Super Majority to Increase Tax Deleted. Amend RSA 77-E:2 to read as follows:

77-E:2 Imposition of Tax. A tax is imposed at the rate of [~~1/4~~] **1/2** of one percent upon the taxable enterprise value tax base of every business

enterprise. [~~A 2/3 majority of those present and voting of each house of the general court shall be necessary to increase the tax rate under this section.~~]

22 Business Enterprise Tax; New Section; Distribution. Amend RSA 77-E by inserting after section 13 the following new section:

77-E:14 Distribution of Funds.

I. The commissioner shall determine the additional amounts of revenue produced by an increase of .25 percent in the rate of tax imposed by RSA 77-E:2 for each fiscal year and shall certify such amounts to the state treasurer by October 1 of that year for deposit in the education trust fund established by RSA 198:39.

II. The commissioner shall make quarterly estimates of the amount of additional revenues that will be produced by the increase in tax rate for the next fiscal year and shall certify such amounts to the state treasurer for deposit in the education trust fund established by RSA 198:39. Such estimates shall be certified on June 1, September 1, December 1 and March 1 of each year.

23 New Section; Tobacco Tax. Amend RSA 78 by inserting after section 31 the following new section:

78:32 Distribution of Funds.

I. The commissioner shall determine the additional amount of revenue produced by any additional tax in excess of 37 cents for each package containing 20 cigarettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes, on all tobacco products sold at retail in this state imposed by RSA 78:7 and shall certify such amount to the state treasurer by October 1 of each year for deposit in the education trust fund established by RSA 198:39.

II. The commissioner shall make quarterly estimates of the amount of additional revenues that will be produced by such increase in tax rate for the next fiscal year and shall certify such amount to the state treasurer for deposit in the education trust fund established by RSA 198:39. Such estimates shall be certified on June 1, September 1, December 1 and March 1 of each year.

24 Definitions; Meals and Rooms Tax; Operator. RSA 78-A:3, IV is repealed and reenacted to read as follows:

IV. "Operator" means any person operating a hotel, charging for a taxable meal, or receiving gross rental receipts, whether as owner or proprietor or lessee, sublessee, mortgagee, licensee, or otherwise.

25 New Paragraphs; Meals and Rooms Tax; Motor Vehicle Rental; Definitions. Amend RSA 78-A:3 by inserting after paragraph XIII the following new paragraphs:

XIV. "Motor vehicle" means a self-propelled vehicle designed to transport persons or property on a public highway that is required by law to be titled and registered for operation on public highways.

XV. "Rental agreement" means an agreement by the owner of a motor vehicle to provide, for not longer than 180 days, the exclusive use of that motor vehicle to another for consideration.

XVI. "Gross rental receipts" means value received or promised as consideration to the owner of a motor vehicle for rental of the vehicle, but does not include:

(a) Separately stated charges for insurance;

(b) Charges for damages to the motor vehicle occurring during the rental agreement period;

(c) Separately stated charges for motor fuel sold by the owner of the motor vehicle.

XVII. "Owner of a motor vehicle" means a person named in the certificate of title as the owner of the vehicle or a person who has the exclusive use of a motor vehicle by reason of rental and holds the vehicle for re-rental.

XVIII. "Department" means the department of revenue administration.

XIX. "Renter" means any person who, for consideration paid to another, is provided a vehicle under a rental agreement.

26 Meals and Rooms Tax; Licenses Required; Penalty. Amend RSA 78-A:4 to read as follows:

78-A:4 Licenses Required; Penalty.

I. Each operator shall register with the department the name and address of each place of business within the state where [he] *it* operates a hotel [or], sells taxable meals, *or rents motor vehicles*. The operator shall pay \$5 for each registration, upon receipt of which the department shall issue a license for each place in such form as it determines, attesting that the registration has been made. The license expires on June 30 in each odd-numbered year unless sooner revoked or suspended by the department. The license shall be conspicuously posted in a public area upon the premises to which it relates.

II. No person shall engage in serving taxable meals [or], renting rooms, *or renting motor vehicles* without first obtaining the license required by this section. The license is nonassignable and cannot be transferred. Any person who fails to register or obtain a license as provided in this section shall be subject to the penalty provisions of RSA 21-J:39.

27 New Paragraph; Tax Imposed on Motor Vehicle Rentals. Amend RSA 78-A:6 by inserting after paragraph II the following new paragraph:

II-a. A tax of 8 percent is imposed upon the gross rental receipts of each rental.

28 Meals and Rooms Tax; Collection of Tax. Amend RSA 78-A:7, I to read as follows:

I. The operator shall either state the amount of the tax to each occupant [or], purchaser of a meal, *or renter*, or state that the tax is included in the price of the occupancy [or], meal, *or gross rental receipts received*. The operator shall demand and collect the tax from the occupant [or], purchaser, *or renter*. The occupant [or], purchaser, *or renter* shall pay the tax to the operator. If the tax is included in the price of the meal [or], occupancy, *or gross rental receipts received*, upon request the operator shall state to the purchaser [or], occupant, *or renter* the amount of the tax.

29 Meals and Rooms Tax; Collection of Tax. Amend RSA 78-A:7, IV to read as follows:

IV. In lieu of keeping detailed records of taxes collected, and in lieu of payment of the taxes collected under this chapter, an operator may, in writing, elect to compute the amount of taxes due at [7] 8 percent of the total taxable rent [or], charge for meals, *or gross rental receipts* received by [him] *it*, or both, exclusive of the taxes collected on such rents [and], charges, *and gross rental receipts*. If this election is made, the operator may not change the method of computing taxes without the written consent of the department. Any balance of the tax remaining in possession of the operator may be retained by [him] *it*.

30 Meals and Rooms Tax; Disposition of Revenue. Amend the introductory paragraph of RSA 78-A:26, I to read as follows:

78-A:26 Disposition of Revenue.

I. Beginning on July 1, 1995, and for each fiscal year thereafter, the department shall pay over all revenue, *except revenues identified in*



*paragraph III of this section*, collected under this chapter to the state treasurer. On or before October 1 of each year, the department shall determine the cost of administration of this chapter for the fiscal year ending on the preceding June 30, and it shall notify the state treasurer of these costs by a report certified by them as to correctness. After deducting the cost of administration of the chapter from the total income, the state treasurer shall distribute the net income as follows:

31 New Paragraph; Meals and Rooms Tax; Disposition of Revenues. Amend RSA 78-A:26 by inserting after paragraph II the following new paragraph:

III. Beginning on July 1, 1999, and for each fiscal year thereafter, the department shall pay over all revenue collected pursuant to RSA 78-A:6, II-a to the state treasurer for deposit in the education trust fund established by RSA 198:39.

32 Transfer Tax; Rate. RSA 78-B:1, I(b) is repealed and reenacted to read as follows:

(b) The rate of the tax is \$.50 per \$100, or fractional part thereof, of the price or consideration for such sale, grant or transfer; except that where the price or consideration is \$4,000 or less there shall be a minimum tax of \$20. The tax imposed shall be computed to the nearest whole dollar.

33 Transfer Tax; Rate. RSA 78-B:1, I(b) is repealed and reenacted to read as follows:

(b) The rate of the tax is \$.75 per \$100, or fractional part thereof, of the price or consideration for such sale, grant or transfer; except that where the price or consideration is \$4,000 or less there shall be a minimum tax of \$20. The tax imposed shall be computed to the nearest whole dollar.

34 New Section; Transfer Tax; Distribution of Funds. Amend RSA 78-B by inserting after section 12 the following new section:

78-B:13 Distribution of Funds.

I. The commissioner shall determine the additional amounts of revenue produced by an increase of \$.25 per \$100 in the rate of tax imposed by RSA 78-B:1 for each fiscal year and shall certify such amounts to the state treasurer by October 1 of that year for deposit in the education trust fund established by RSA 198:39.

II. The commissioner shall make quarterly estimates of the amount of additional revenues that will be produced by the increase in tax rate for the next fiscal year and shall certify such amounts to the state treasurer for deposit in the education trust fund established by RSA 198:39. Such estimates shall be certified on June 1, September 1, December 1 and March 1 of each year.

35 New Chapter; Utility Property Tax. Amend RSA by inserting after chapter 83-E the following new chapter:

## CHAPTER 83-F

### UTILITY PROPERTY TAX

83-F:1 Definitions. In this chapter:

I. "Commissioner" means the commissioner of the department of revenue administration.

II. "Department" means the department of revenue administration.

III. "Taxable period" means the period beginning April 1, and ending March 31 of the following year.

IV. "Utility property owner" means any person, partnership, limited liability company, association, corporation or other entity, their trustees or receivers appointed by any court, owning utility property.

V. "Utility property" means all real estate, buildings and structures, machinery, dynamos, apparatus, poles, wires, fixtures of all kinds and descriptions, and pipe lines located within New Hampshire employed in the generation, production, supply, distribution, transmission, or transportation of electric power or natural gas, crude petroleum and refined petroleum products or combinations thereof, water, or sewage subject to tax under RSA 72:6, 72:7 and 72:8; provided that no electric power fixtures which would otherwise be taxed under this chapter shall be taxed under this chapter if they are employed solely as an emergency source of electric power. "Utility property" shall not include:

(a) Water and air pollution control facilities exempt from local property taxation under RSA 72:12-a; and

(b) Any other property which is not subject to local property taxation.

83-F:2 Tax Imposed. For taxable periods beginning April 1, 1999, a tax is imposed upon the value of utility property at the rate of \$6.60 on each \$1000 of such value, to be assessed annually as of April 1, and every year thereafter, and paid in accordance with this chapter.

83-F:3 Determination of Value. On or before December 1 of the tax year, the commissioner shall determine the value of utility property for the purposes of this chapter by appraising such property at its full and true value. Notice of such determination shall be given to the taxpayer within 15 days of the commissioner's determination.

83-F:4 Persons Liable. The tax imposed by this chapter shall be assessed upon each person with an ownership interest in utility property, in the proportion that such person's ownership interest bears to the entirety of the ownership in the property.

83-F:5 Returns and Declarations.

I. On or before January 15 each year, each utility property owner shall file with the commissioner of revenue administration, on a form prescribed by the commissioner, a return based on the valuation for April 1 of the prior year. The return shall be accompanied by the payment of such amount as has not been prepaid in accordance with paragraph III of this section. If the return shows an additional amount to be due, such additional amount is due and payable at the time the return is filed. If such return shows an overpayment of the tax due, a credit against a subsequent payment or payments due, to the extent of the overpayment, shall be allowed.

II. On or before April 15 of each year, each utility property owner liable to pay the tax imposed by this chapter shall file with the department, on a form prescribed by the commissioner, a statement setting forth the amount of such person's ownership interest as of April 1. The statement shall include such additional information as the commissioner shall require and shall be signed by an authorized representative, subject to the pains and penalties of perjury.

III. For taxable periods ending before April 1, 2000, each utility property owner liable to pay the tax shall, in addition, file a declaration on or before July 1, 1999 of the estimated tax to be assessed as of April 1 in the current taxable period, based on the equalized value of utility property used in the department's equalization report for April 1, 1998 accompanied by payment of 1/3 of the estimated tax due. Additional payments of 1/3 of the estimated tax shall be made on September 15, 1999 and December 15, 1999.

IV. For taxable periods ending after March 31, 2000, at the time the statement required by paragraph II is filed, each person liable for the tax shall, in addition, file a declaration of the estimated tax to be assessed as of April 1 in the current taxable period, based on the tax as-

sessed for the preceding taxable year, accompanied by payment of 1/4 of the estimated tax due. Additional payments of 1/4 of the estimated tax shall be made on June 15, September 15 and December 15.

V. As of June 1 of each year the principal owner of utility property shall file a list of the changes made to the utility property since the prior April 1. This statement shall include such additional information as the commissioner shall require and shall be signed by an authorized representative, subject to the pains and penalties of perjury.

VI. Taxes and estimated taxes not paid when due shall be subject to appropriate penalties and interest under RSA 21-J.

83-F:6 Records.

I. Every person liable for tax under RSA 83-F:4 shall:

(a) Keep such records as may be necessary to determine the amount of such person's liability under this chapter.

(b) Preserve such records for the period of at least 3 years or until any litigation or prosecution under this chapter is finally determined.

(c) Make such records available for inspection by the commissioner or authorized agents, upon demand, at reasonable times during regular business hours.

II. Whoever violates any of the provisions of this section shall be subject to the penalties imposed under RSA 21-J:39.

83-F:7 Administration.

I. The commissioner shall collect the taxes, interest, additions to tax and penalties imposed under this chapter. The commissioner shall determine the expense of administration of this chapter and shall certify and pay over to the state treasurer for deposit in the education trust fund established by RSA 198:39 the amount of remaining balance of the funds collected under this chapter after the expenses of administration have been deducted.

II. The commissioner is authorized to contract for the services of utility appraisers as needed for the proper administration of this chapter. Such contract expenses shall be deemed an expense of administration.

III. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

(a) The administration of the tax imposed under RSA 83-F:2;

(b) The valuation of utility property required under RSA 83-F:3; and

(c) The recovery of any tax, interest on tax, or penalties imposed by this chapter.

IV. The commissioner may institute actions in the name of the state to recover any tax, interest on tax, additions to tax or the penalties imposed by this chapter.

V. In the collection of the tax imposed by this chapter, the commissioner may use all of the powers granted to tax collectors under RSA 80 for the collection of taxes. The commissioner shall also have all of the duties imposed upon the tax collectors by RSA 80 that are applicable to the commissioner. The provisions of RSA 80:26 shall apply to the sale of land for the payment of taxes due under this chapter, and the state treasurer is authorized to purchase the land for the state. If the state purchases the land, the state treasurer shall certify the purchase to the governor, and the governor shall draw a warrant for the purchase price out of any money in the treasury not otherwise appropriated.

83-F:8 Appeals. Utility property taxpayers aggrieved by the determination by the commissioner of the value of utility property pursuant to RSA 83-F:3 may appeal such valuation within 30 days of notification of such determination to the board of tax and land appeals or the superior court of the county in which the taxpayer resides or has a place of busi-



ness. Appeals other than appeals of valuation shall be made according to the procedure and subject to the time limits provided for other taxes administered by the department under RSA 21-J.

83-F:9 Exemption from Local Taxation. Persons and property subject to taxation under this chapter shall not be subject to tax under RSA 76:3; provided, however, that nothing in this chapter shall be construed to exempt such persons or property from local school, municipal, district or county taxation under RSA 76.

36 Extent. Amend RSA 85:1 to read as follows:

85:1 Who May Issue. The state treasurer *or the commissioner of revenue administration*, and each county and town treasurer, may issue extents under their hands and seals respectively, in cases authorized by law, and such extents shall be deemed to be executions against the person and property.

37 Cooperative School Districts; Adequate Education Grants. Amend the introductory paragraph of RSA 195:7, I to read as follows:

I. If a cooperative school district was organized prior to July 1, 1963, during the first 5 years after the formation of a cooperative school district each preexisting district shall pay its share of all capital outlay costs and *all* operational costs *in excess of the amount determined necessary to provide an adequate education under RSA 198:40, I(a)* in accordance with either one of the following formulas as determined by a majority vote of the cooperative district meeting:

38 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:14, I(b) to read as follows:

(b) The commissioner of revenue administration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum, in accordance with RSA 21-J:35, which may be used as a setoff against the amount appropriated when it appears to the commissioner of revenue administration such adjustment is in the best public interest. *The commissioner of revenue administration shall apply the total amount of all adequate education grants received pursuant to RSA 198:42.*

39 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:18, III(e) to read as follows:

(e) The method of apportioning ~~the~~ *all* operating expenses *in excess of the amount determined necessary to provide an adequate education under RSA 198:40, I(a)*, of the cooperative school district among the several preexisting districts and the time and manner of payment of such shares. Home education pupils who do not receive services from the cooperative school district, except an evaluation pursuant to RSA 193-A:6, II shall not be included in the average daily membership relative to apportionment formulas.

40 Cooperative School Districts; Adequate Education Grants. Amend RSA 195:18, IX to read as follows:

IX. The organization meeting of a cooperative school district shall be called to order by the chairperson of the cooperative school district planning board, or by the clerk-treasurer thereof, who shall serve as temporary chairperson for the first order of business which shall be the election of a moderator and of a temporary clerk, by ballot, who shall be qualified voters of the district. From and after the issuance of the certificate of formation by the board to the date of operating responsibility of the cooperative school district, such district shall have all the authority and powers of a regular school district for the purposes of incurring indebtedness, for the construction of school facilities and for such other functions as are necessary to obtain proper facilities for a complete pro-

gram of education. When necessary in such interim, the school board of the cooperative school district is authorized to prepare a budget and call a special meeting of the voters of the district, which meeting shall have the same authority as an annual meeting, for the purpose of adopting the budget, making necessary appropriations, and borrowing money. Whenever the organization meeting is held on or before April 20 in any calendar year, no annual meeting need be held in such calendar year. Sums of money raised and appropriated at the organization meeting or any interim meeting prior to the first annual meeting shall be forthwith certified to the commissioner of revenue administration and the state department of education upon blanks prescribed and provided by the commissioner of revenue administration for the purpose, together with a certificate of estimated revenues, so far as known, and such other information as the commissioner of revenue administration may require. The commissioner of revenue administration shall examine such certificates and delete any appropriations which appear not made in accordance with the law, and adjust any sum which may be used as a setoff against the amount appropriated when it appears to the commissioner such adjustment is in the best public interest. ***The commissioner of revenue administration shall apply the total amount of all adequate education grants received pursuant to RSA 198:42, as a setoff against the amount appropriated.*** The commissioner of revenue administration shall certify to the state department of education the total amount of taxes to be raised for said cooperative school district and the state department of education shall determine the proportional share of said taxes to be borne by each preexisting school district and notify the commissioner of revenue administration of its determination. Upon certification by the commissioner of revenue administration the selectmen of each town shall seasonably assess the taxes as provided by law. The selectmen shall pay over to the treasurer of the cooperative district such portion of the sums so raised as may reasonably be required according to a schedule of payments needed for the year as prepared by the treasurer and approved by the cooperative school board, but no such payment shall be greater in percentage to the total sum to be raised by one local district than that of any other local district comprising such cooperative school district.

41 New Subdivisions; State Aid for Educational Adequacy; Education Trust Fund; Excess Education Property Tax Payment; Commission. Amend RSA 198 by inserting after section 37 the following new subdivisions:

State Aid for Educational Adequacy; Education Trust Fund

198:38 Definitions. In this subdivision:

I. "Municipality" means a city, town, or unincorporated place.

II. "School district" means school district as defined in RSA 194:1 or RSA 195:1.

III. "Elementary school" means a school with any of the grades kindergarten through 8.

IV. "High school" means a school with any of the grades 9 through 12.

V. "Base expenditure per pupil" for each school district that operates an elementary school means the amounts calculated in accordance with RSA 198:40, I(a).

VI. "Average base cost per pupil of an elementary school pupil" means the amount as determined in accordance with RSA 198:40.

VII. "Weighted pupils" means resident pupils weighted as follows:

(a) Every pupil, including kindergarten pupils, 1.0.

(b) A high school pupil, an additional weight of 0.2.

(c) An educationally disabled child, an additional weight of 1.0.

(d) An elementary pupil who is eligible to receive a free or reduced-price meal shall receive an additional weight as follows:

(1) If the pupil is in a district in which less than 12 percent of the elementary pupils are eligible to receive a free or reduced-price meal, an additional weight of zero.

(2) If the pupil is in a district where at least 12 percent but less than 24 percent of the elementary pupils are eligible to receive a free or reduced-price meal, an additional weight of 0.5.

(3) If the pupil is in a district in which at least 24 percent of the elementary pupils are eligible to receive a free or reduced-price meal, an additional weight of 1.0.

VIII. "Educationally disabled child" means an educationally disabled child as defined in RSA 186-C:2, I.

IX. "Average daily membership in attendance" means average daily membership in attendance as defined in RSA 189:1-d, III.

X. "Average daily membership in residence" and "resident pupils" mean the average daily membership in residence as defined in RSA 189:1-d, IV except that no kindergarten pupil shall count as more than ½ day attendance per calendar day.

XI. "Transportation costs" means the costs of transporting pupils to and from school and other school activities reported by school districts on the MS-25 form.

198:39 Education Trust Fund Created and Invested.

I. The state treasurer shall establish an education trust fund in the treasury. Moneys in such fund shall not be used for any purpose other than to distribute adequate education grants to municipalities' school districts pursuant to RSA 198:42. The state treasurer shall deposit into this fund immediately upon receipt:

(a) Funds certified to the state treasurer by the commissioner of revenue administration pursuant to RSA 77-A:20-a, relative to business profits taxes.

(b) Funds certified to the state treasurer by the commissioner of revenue administration pursuant to RSA 27-E:14, relative to business enterprise tax.

(c) Funds collected and paid over to the state treasurer by the commissioner of revenue administration pursuant to RSA 78-A:26, III relative to the tax on motor vehicle rentals.

(d) Funds collected and paid over to the state treasurer by the department of revenue administration pursuant to RSA 78:32, relative to tobacco taxes.

(e) Funds certified to the state treasurer by the commissioner of revenue administration pursuant to RSA 78-B:13, relative to real estate transfer taxes.

(f) Funds collected and paid over to the state treasurer by the department of revenue administration pursuant to RSA 83-F:7, I, relative to the utility property tax.

(g) The full amount of excess education property tax payments from the department of revenue administration pursuant to RSA 198:46.

(h) All moneys due the fund in accordance with RSA 284:21-j, relative to sweepstakes.

(i) Tobacco settlement funds in the amount of \$40,000,000 annually.

(j) The school portion of any revenue sharing funds distributed pursuant to RSA 31-A:4 which were apportioned to school districts in the property tax rate calculations in 1998.

(k) Any other moneys appropriated from the general fund.



II. The education trust fund shall be nonlapsing. The state treasurer shall invest that part of the fund which is not needed for immediate distribution in short-term interest-bearing investments. The income from these investments shall be returned to the fund.

198:40 Determination of Per Pupil Adequate Education Cost and Adequate Education Grant.

I. For the biennium beginning July 1, 1999, and every biennium thereafter, the cost per pupil shall be established using the following formula:

(a) The department of education shall calculate the base expenditure per pupil for each school district that operates an elementary school by subtracting from the total expenditures at the elementary school level, tuition to other school districts or approved educational programs, capital costs and debt service on such costs, special education costs, food service costs, transportation costs, and federal revenues not otherwise deducted. For each school district, this amount shall be divided by the average daily membership in attendance at the elementary school level to attain the base expenditure per pupil.

(b) The adequate education grant amount shall be calculated as follows:

(1) The department of education shall identify those school districts where 40 to 60 percent of the elementary pupils enrolled in the grades tested on the day testing began, achieved a scaled score, in the statewide educational improvement and assessment program administered pursuant to RSA 193-C, in all areas tested, equivalent to performance at the basic level or above.

(2) From the school districts identified in subparagraph I (b)(1) of this section, the department of education shall then identify those school districts that have the lowest base expenditure per pupil as calculated pursuant to subparagraph I(a) and which represent, as nearly as possible, 50 percent of the average daily membership in attendance at the elementary level of the school districts identified in subparagraph I(b)(1) of this section.

(3) The department of education shall calculate the average base cost per pupil of an adequate education at the elementary school level by multiplying the base expenditure per pupil of each school district identified in subparagraph I(b)(2) of this section by the average daily membership in attendance at each of the selected school districts, and add the results across all districts selected. This sum shall then be divided by the total average daily membership in attendance at the elementary school level in all of the selected school districts and the result shall be multiplied by .9025.

II. The weighted average daily membership in residence for each district shall be calculated by combining the district's elementary average daily membership in residence with its weighted high school average daily membership in residence, the district's average daily membership in residence resulting from educationally disabled children, and the district's additional average daily membership in residence resulting from elementary pupils eligible to receive a free or reduced-priced meal. The statewide weighted average daily membership in residence of pupils shall be calculated by combining the weighted average daily membership in residence of each school district in the state.

III. For each fiscal year, the statewide cost of an adequate education for all pupils shall be calculated by multiplying the average base per pupil cost of an adequate education by the statewide weighted average daily membership in residence of pupils and then adding 70 percent of total statewide district transportation costs.

**198:41 Determination of Adequate Education Grants.**

I. Except for municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of education shall determine the amount of the adequate education grant for the municipality as follows:

(a) Multiply the average base cost per pupil of an elementary pupil by the weighted average daily membership in residence for the municipality;

(b) Add to the product of subparagraph (a), 70 percent of the municipality's apportioned transportation cost;

(c) Subtract from the sum of subparagraph (b) the amount of the education property tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76:9 for the next tax year.

II. For municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of education shall determine the amount of the adequate education grant for each municipality as the lesser of the following 2 calculations:

(a) The amount calculated in accordance with paragraph I of this section; or

(b) The total amount paid for items of current education expense as determined by the department of education minus the amount of the education property tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76:9 for the next tax year.

**198:42 Distribution Schedule of Adequate Education Grant; Appropriation.**

I. The adequate education grant determined in RSA 198:41 shall be distributed to each municipality's school district or districts legally responsible for the education of the pupils who attend approved public schools within the district or in other districts, as the case may be, from the education trust fund in 4 payments of 20 percent on August 1, 20 percent on September 1, 30 percent on January 1, and 30 percent on April 1 of each school year; provided that for a dependent school district, the grant determined in RSA 198:41 shall be distributed to the municipality, which shall appropriate and transfer the grant funds to its dependent school department.

II. For the fiscal year beginning July 1, 1999, and every fiscal year thereafter the amount necessary to fund the grants under RSA 198:41 is hereby appropriated from the education trust fund created under RSA 198:39 to the department of education according to the following formula: from the amount calculated in accordance with RSA 198:40, III, subtract the aggregate amount of the education property tax warrants to be issued by the commissioner of revenue administration for municipalities reported pursuant to RSA 76:9 for the next tax year.

III. The department of education shall certify the amount of each grant to the state treasurer and direct the payment thereof to the school district. When a payment of a grant is made to a school district, the municipality on whose behalf the payment is made, shall receive notification from the state treasurer of the amount of the payment made to its school district or districts.

**198:43 Additional Education Expenditures.** School districts are authorized to develop educational programs beyond those required for an adequate education and to raise and appropriate amounts necessary for such programs.

**198:44 Duties of the Department of Education and the Board of Education.**

I. The department of education shall, on or before September 30 of each year, collect from the school districts final data concerning all aspects of student attendance for the school year ending June 30 of that year necessary to establish the average daily membership, average daily membership in residence, and weighted average daily membership in residence, including the municipality of residence for each pupil for that year. The department of education shall submit a report by December 31 to the speaker of the house of representatives and the senate president to be used for purposes of determination by the legislature of the appropriation to the education trust fund. A copy of such report shall, at the same time, be given to the department of revenue administration.

II. The board of education shall adopt rules pursuant to RSA 541-A necessary to the proper administration of this subdivision.

198:45 Submission of Data by School Districts. Each school district shall submit all attendance information required by the department of education under this subdivision on or before September 30 of each year.

#### Excess Education Property Tax Payment

##### 198:46 Excess Education Property Tax Payment.

I. Except as provided in paragraph IV and RSA 198:48, VI, municipalities for which the education property tax exceeds the amount necessary to fund an adequate education determined by RSA 198:40 shall collect and remit such excess amount to the department of revenue administration on or before March 15 of the tax year in which the excess occurs.

II. The amount of such excess to be remitted shall not include any income derived from the investment of funds by the town treasurer under RSA 41:29. Any funds remaining after full payment of the excess tax required in paragraph I shall become available for unrestricted use by the municipality.

III. The commissioner of the department of revenue administration shall collect from the selectmen the excess tax and pay the excess tax over to the state treasurer for deposit in the education trust fund established by RSA 198:39.

IV. The commissioner of the department of revenue administration shall calculate the excess amount owed by each municipality pursuant to paragraph I for the tax year 1999. Notwithstanding any other provision of this section, the warrant issued pursuant to RSA 76:8 shall direct municipalities to only collect and remit to the department of revenue administration not more than the following percentages of excess amounts during the tax years 1999-2004:

- (a) In tax year 1999, 10 percent;
- (b) In tax year 2000, 20 percent;
- (c) In tax year 2001, 30 percent;
- (d) In tax year 2002, 50 percent;
- (e) In tax year 2003, 75 percent; and
- (f) In tax year 2004, 100 percent.

198:47 Forms. The commissioner shall approve and provide forms relative to the reporting and remitting of excess education property tax by the municipalities.

198:48 Maintenance of Local Control. Distributions under RSA 198:42 depend only on weighted average daily membership in residence and the per pupil adequacy cost amounts as determined in this subdivision and are independent of how the municipalities decide to spend the distributions or other funds they may raise for education. Notwithstanding any other provision of law, nothing in this subdivision is intended in any way to limit or control how school districts operate or spend their budgets.



198:49 Adequate Education and Education Financing Commission.

I. An adequate education financing commission shall be established consisting of:

(a) Five members of the house of representatives, appointed by the speaker of the house; and

(b) Five members of the senate, appointed by the senate president.

II. The chair of the commission shall rotate biennially between the first-named house member and the first-named senate member. The first chairperson shall be the chairperson of the house finance committee. A member shall only serve while a member of the general court. The members shall not be compensated but shall receive mileage at the legislative rate when carrying out their duties.

III. An advisory committee to the commission shall be established consisting of:

(a) Four members appointed by the governor, one of whom shall be an elementary or secondary special education teacher, one of whom shall be a primary teacher who does not teach special education, and one of whom shall be a member of the business community.

(b) The chancellor of the university system of New Hampshire or designee.

(c) The commissioner of the regional community-technical college system, or designee.

(d) One member from the state board of education, appointed by the chairperson of the state board of education.

(e) Eight members who shall be agreed to and jointly appointed by the governor, the president of the senate, and the speaker of the house consisting of the following:

(1) One local school board member, with the advice of the New Hampshire School Boards Association;

(2) One school administrator, with the advice of the New Hampshire School Administrators Association;

(3) One special education administrator at the elementary or secondary school level, with the advice of the New Hampshire Association of Special Education Administrators;

(4) Two parents of school-age children, one of whom shall be the parent of a child with an educational disability;

(5) One member from the business community, who shall be associated with a School Initiative program;

(6) One school business official, with the advice of the New Hampshire Association of School Business Officials; and

(7) One member from a special education advocacy organization.

IV. In order to ensure that all students are provided an adequate education, the duties of the commission shall be as follows:

(a) Recommend the costs of an adequate education for all students in New Hampshire by calculating adjustments for individual school districts based on yearly inflation, cost of living variances, diseconomies of scale, transportation variability, demographics, including for school districts with a disproportionate number of students who are economically disadvantaged or have educational disabilities, and such other factors as deemed relevant.

(b) Recommend the amount of state aid, including building aid, to be distributed to cities and towns based upon the cost of an adequate education as recommended in subparagraph (a) and the method for distributing the state aid.

(c) Recommend changes in policy and procedure in the areas of educational improvement and accountability.

(d) Recommend interim and permanent processes to ensure adequate planning and implementation at the local and state level of special education and educationally related services, including planning for and development, on an interagency basis, of local school-based options for pupils who have been placed in alternative or separate schools who could be placed in appropriate less restrictive options if available.

V. The commission shall report its findings and recommendations no later than December 1, 2000. The report shall include, for each recommendation, proposed implementation schedules with timelines, specific steps, agencies and persons responsible, and resources needed. Where feasible, all plans, measures and initiatives shall be proposed as legislation or regulation so that they will have the force of law. All recommendations and plans shall be designed to be fully implemented no later than September 1, 2004.

VI. The department of justice, department of revenue administration, department of education, and department of health and human services shall provide the commission with assistance.

VII. The commission may request that the legislative facilities committee approve funding for the commission not to exceed \$300,000.

42 Reference Change. Amend RSA 193:1, I(c) to read as follows:

(c) The relevant school district superintendent has excused a child from attendance because the child is physically or mentally unable to attend school, or has been temporarily excused upon the request of the parent for purposes agreed upon by the school authorities and the parent. Such excused absences shall not be permitted if they cause a serious adverse effect upon the student's educational progress. Students excused for such temporary absences may be claimed as full-time pupils for purposes of calculating state aid under RSA 186-C:18 and ~~[RSA 198:27-37]~~ **adequate education grants under RSA 198:41.**

43 Reimbursement Anticipation Notes; Version Effective Until July 1, 1999. Amend RSA 198:20-d to read as follows:

198:20-d Reimbursement Anticipation Notes. Notwithstanding any other provision of law to the contrary, a school district may incur debt in anticipation of reimbursement under RSA 186-C:18, **and a municipality may incur debt in anticipation of reimbursement under RSA 198:42.** The governing body, after receiving authorization for borrowing from the legislative body, may elect to recognize the proceeds of the borrowing as revenue for property tax rate setting purposes by providing written notification, prior to September 1, to the commissioner of the department of revenue administration stating the specific amount of borrowing to be recognized as revenue.

44 Reimbursement Anticipation Notes; July 1, 1999 Version. Amend RSA 198:20-d to read as follows:

198:20-d Reimbursement Anticipation Notes. Notwithstanding any other provision of law to the contrary, a school district may incur debt in anticipation of reimbursement under RSA 186-C:18 **and a municipality may incur debt in anticipation of reimbursement under RSA 198:42.** The governing body, after notice and public hearing, may elect to borrow such funds and to recognize the proceeds of the borrowing as revenue for property tax rate setting purposes by providing written notification to the commissioner of the department of revenue administration stating the specific amount of borrowing to be recognized as revenue. Any borrowing under this section shall be exempt from the provisions of RSA 33, relative to debt limits.

45 Sweepstakes. RSA 284:21-j is repealed and reenacted to read as follows:

284:21-j Establishment. The state treasurer shall credit all moneys received from the sweepstakes commission, and interest received on such moneys, to a special fund from which the treasurer shall pay all expenses of the commission incident to the administration of this subdivision and RSA 287-E. Any balance left in such fund after such expenses are paid shall be deposited in the education trust fund established under RSA 198:39.

46 Transition. As of July 1, 1999, all funds, from any source derived, which would be distributed as foundation aid and any funds, from any source derived, which would be distributed as kindergarten aid shall be deposited in the education trust fund under RSA 198:39, including the \$62,000,000 appropriated under 1998, 389:16, II.

47 Tobacco Settlement Funds. Upon the receipt by the fiscal year ending June 30, 2000, \$16,000,000 in funds received from the initial payment to the state of New Hampshire as a result of the settlement in 1998 of litigation against tobacco companies shall be deposited in the education trust fund established in RSA 198:39. The governor is authorized to draw a warrant for said sums out of funds received by the state from settlement of the tobacco litigation.

48 Removing Reference to Foundation Aid. Amend RSA 198:21, V to read as follows:

V. No pupil counted by any school district for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be ~~[included in average daily membership for the purposes of foundation aid or]~~ counted for the purposes of grants pursuant to RSA 198:22.

49 Removing Reference to Foundation Aid. Amend RSA 198:22, V to read as follows:

V. No pupil counted by any school for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be ~~[included in average daily membership for the purposes of foundation aid or]~~ counted for the purpose of grants pursuant to RSA 198:21.

50 Payment in Lieu of Taxes. Amend RSA 227-H:17 to read as follows:

227-H:17 Payment in Lieu of Taxes. The commissioner of revenue administration shall adopt rules, pursuant to RSA 541-A, relative to forms for application to the commissioner of revenue administration for payment for lost taxes. ~~[In any year in which no state tax is levied,]~~ Any town in which national forest lands and land held by the state for operation and development as state forestland, as defined by the department for the purposes of this section, are situated, whether acquired by gift, devise, purchase, or in any other manner, may apply, by its selectmen, to the commissioner of revenue administration on forms provided by the commissioner, annually before September 1, for the payment of an amount not exceeding the taxes for all purposes which such town might have received from taxes on such lands in such year had such lands been taxable. In the event that the amount appropriated in any biennium shall be insufficient for the purposes under this section, then the towns entitled to benefits under this section shall be reimbursed proportionately, unless otherwise subsequently ordered by the legislature.

51 1999 Semi-annual Rate for Property Tax Payments.

I. Notwithstanding the provisions of RSA 76:15-a and RSA 76:15-b for the tax year beginning April 1, 1999, in municipalities liable for an excess statewide education property tax payment pursuant to RSA 198:46, the partial payment of taxes assessed shall be computed by taking the prior year's assessed valuation times  $\frac{1}{2}$  of the previous year's municipal tax



rate;  $\frac{1}{2}$  of the previous year's county tax rate;  $\frac{1}{2}$  of the previous year's local school tax rate; and adding thereto  $\frac{1}{2}$  of the statewide education property tax rate which would collect the amount to be collected and remitted for tax year 1999 under RSA 198:46, IV, as determined by the department of revenue administration; provided, however, that whenever it shall appear to the selectmen or assessors that certain individual properties have physically changed in valuation, they may use the current year's appraisal in place of the prior year's valuation to compute the partial payment.

II. Notwithstanding the provisions of RSA 76:15-a and RSA 76:15-b for the tax year beginning April 1, 1999, in all other municipalities, the partial payment of taxes assessed shall be computed by taking the prior year's assessed valuation times  $\frac{1}{2}$  of the previous year's municipal tax rate:  $\frac{1}{2}$  of the previous year's county tax rate;  $\frac{1}{2}$  of the previous year's local school tax rate deducting therefrom, if the municipality so chooses,  $\frac{1}{2}$  of the rate which would collect the amount of the increase in state aid from fiscal year 1999 to fiscal year 2000 resulting from the adequate education grant under RSA 198:42 for the 1999 tax year as determined by the department of revenue administration; provided, however, that whenever it shall appear to the selectmen or assessors that certain individual properties have physically changed in valuation, they may use the current year's appraisal in place of the prior year's valuation to compute the partial payment.

III. In order to avoid a disproportionate semi-annual collection of taxes, the commissioner of revenue administration may, upon request of a municipality, approve the use of a different method to calculate that municipality's 1999 semi-annual property tax rate.

52 Special Transition Rules. The following special transition rules shall apply to the implementation of this act in the first fiscal year following enactment:

I. For the school year 1999/2000, the adequate education grant determined in RSA 198:42 shall be distributed to each municipality from the education trust fund in 4 payments as follows:

(a) On July 1, 1999, and September 1, 1999,  $\frac{1}{8}$  the total adequate education grant;

(b) On January 1, 2000 and April 1, 2000,  $\frac{3}{8}$  the total adequate education grant. The department shall certify the amount of each grant to the state treasurer and direct the payment thereof to the municipality.

II. Notwithstanding any other provision of law, the commissioner of revenue administration shall for the April 1, 1999 tax year issue the warrants required by RSA 76:8 on or before 30 days after passage of this act.

III. Notwithstanding any other provision of law, the commissioner of education shall determine the amount of the adequate education grant for each municipality pursuant to RSA 198:41 for the 1999/2000 school year on or before 30 days after the effective date of this section.

IV. Notwithstanding the provisions of RSA 76:11-a, I, the governing body of any municipality may choose to combine the local and state education property tax rates on the tax bill.

V. Notwithstanding any other provision of law, for any taxpayer required to pay utility property tax directly to the state for deposit in the education trust fund pursuant to RSA 83-F, the selectmen or assessors shall abate the state education property tax amount shown on any tax bill sent to such taxpayer pursuant to RSA 76:11-a, I.

53 Position Established; Appropriations.

I. To carry out the financial and educational reporting requirements of this act, there is hereby established within the department of education a full-time temporary position of systems development specialist IV, labor grade 25, for the 15-month period ending June 30, 2000.

II. The sum of \$69,500 is hereby appropriated from the education trust fund created under RSA 198:39 for the fiscal year ending June 30, 2000 to the department of education to fund the position created in paragraph I, including salary, benefits, rent, supplies, and travel.

III. The sum of \$4,600,000 for the fiscal year ending June 30, 2000, is hereby appropriated to the department of revenue administration to reimburse municipalities for the increased administrative costs necessary to carry out the financial purposes of this act in accordance with part 1, article 28-a of the New Hampshire constitution. The amount to be distributed to each municipality shall be determined according to the proportion of state property tax assessed by such municipality to the total state property tax assessed. Such amount shall be distributed on or before September 30, 1999. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

IV. The sum of \$2,700,000 for the biennium ending June 30, 2001, is hereby appropriated to the department of revenue administration to fund the costs necessary to implement this act. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

V. The sum of \$100,000 for the biennium ending June 30, 2001 is hereby appropriated from the education trust fund created under RSA 198:30 to the department of education to fund the costs necessary to upgrade school districts' computer systems to carry out the reporting responsibilities of this act.

VI. It is the intent of the state to appropriate a sum certain to reimburse municipalities for the costs of additional hardware and software necessary to implement the provisions of this act.

54 Special Provision for Foundation Aid. Notwithstanding the repeal pursuant to section 58 of this act of RSA 198:27-37, relative to foundation aid and alternative foundation aid, the payment of foundation aid which would have been made in April 1999 pursuant to RSA 198:31 before such section was repealed, shall be calculated by the department of education and distributed to the recipients as if such repeal had not occurred.

#### 55 Tax Equity and Efficiency Commission.

I. There is established a tax equity and efficiency commission to study issues relating to tax fairness, proportionality, efficiency and complexity for funding public education, and to examine all taxes currently imposed on the citizens of New Hampshire to fund public education.

II. The commission shall consist of the following members:

(a) Five members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Five members of the senate, appointed by the president of the senate.

(c) The governor, or designee.

(d) The commissioner of the department of revenue administration, or designee.

(e) The commissioner of the department of education, or designee.

(f) The state treasurer, or designee.

III. Legislative members shall receive mileage at the legislative rate when attending to the duties of the commission.

IV. The commission members denominated in subparagraphs II(c) through (f) shall sit ex officio and shall not be entitled to vote on commission business.

V. The commission shall study issues arising under this act relating to tax fairness and administrative implementation which may be appropriate for further legislative action, as well as other aspects of fairness and efficiency in the funding of public education.

VI. The members of the commission shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member and shall be held within 30 days of the effective date of this section.

VII. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before December 31, 1999 and on or before March 31, 2000.

VIII. The commission may request that the legislative facilities committee approve funding for the commission not to exceed \$300,000.

56 Applicability; Cigarette Tax. Any increase in the cigarette tax rate in RSA 78:7 over 37 cents adopted and enacted by any act of the 1999 general court shall apply to all persons licensed under RSA 78:2. Such persons shall inventory all taxable tobacco products in their possession and file a report of such inventory with the department of revenue administration on a form prescribed by the commissioner within 20 days after the effective date of the tax rate increase. The tax rate increase shall apply to such inventory and the difference, if any, in the amount paid previously on such inventory and the current effective rate of tax shall be paid with the inventory form. The inventory form shall be treated as a tax return for the purpose of computing penalties under RSA 21-J.

57 Contingency; Constitutional Amendment; Reenactment of Laws.

I. If the voters of the state adopt an amendment to the New Hampshire Constitution, which constitutional amendment substantially relates to the role of the general court in determining the nature of and means for funding public education, then the provisions of this act except as provided in paragraphs II and III shall be without effect as of July 1 following such adoption, and the provisions of the Revised Statutes Annotated affected by this act shall be hereby reenacted as they were in effect on the day before this act became effective. Such reenactment shall not affect any other amendments to any statutory provisions adopted in any other act of the legislature which becomes law.

II. If the voters of the state adopt an amendment to the New Hampshire Constitution, which constitutional amendment substantially relates to the role of the general court in determining the nature of and means for funding public education, then the provisions of this act relative to the education property tax shall be without effect as of April 1 following such adoption, and the provisions of the Revised Statutes Annotated affected by this act shall be hereby reenacted as they were in effect on the day before this act became effective. Such reenactment shall not affect any other amendments to any statutory provisions adopted in any other act of the legislature which becomes law.

III. Notwithstanding the provisions of paragraph I, if a constitutional amendment is adopted pursuant to paragraph I the rate of the real estate transfer tax in RSA 78-B:1, I shall revert to the rate imposed by section 32 of this act, unless specifically amended or repealed by an act of the legislature.

IV. The director of legislative services, upon the proclamation of the adoption of the constitutional amendment pursuant to paragraph I, is



hereby authorized to make changes to the Revised Statutes Annotated to conform the Revised Statutes Annotated pursuant to the provisions of paragraph I.

58 Repeal. The following are repealed:

I. RSA 78:20, relative to the applicability of the tobacco tax.

II. RSA 78-B:10-a, relative to the real estate transfer questionnaire.

III. RSA 21-J:3, XXIII, relative to the commissioner of revenue administration's duty to determine local per capita income for purposes of foundation aid.

IV. RSA 21-J:13, XI, relative to the form and content of the real estate transfer questionnaire.

V. RSA 83-D, relative to the tax on nuclear station property.

VI. RSA 194-B:11, VIII, relative to foundation aid in relation to charter and open enrollment schools.

VII. RSA 198:1-3, relative to required annual district property taxes.

VIII. RSA 198:15-i – RSA 198:15-q, relative to kindergarten incentive program, kindergarten aid and alternative kindergarten programs.

IX. RSA 198:27-37, relative to foundation aid and alternative foundation aid.

X. 1998, 389:15, 16, and 17 relative to educational funding commitments and funding for local education betterment.

59 Effective Date.

I. Sections 19 and 21 of this act shall take effect July 1, 1999, and shall apply to returns and taxes due on account of taxable periods ending on or after July 1, 1999. In the case of any business organization or enterprise which has elected a 52-53 week taxable period under section 441(f) of the United States Internal Revenue Code and the fiscal year of which ends on the last day of the week nearest to June 30, 1999, the taxable period shall be deemed to have ended on June 30, 1999, for the purposes of this act.

II. Sections 24-31, 33, and paragraph X of section 58 of this act shall take effect July 1, 1999.

III. Section 44 of this act shall take effect July 1, 1999 at 12:01 a.m.

IV. Section 14 and paragraph V of section 58 of this act shall take effect upon its passage, and shall apply to property taxes due for the tax year beginning April 1, 1999.

V. The remainder of this act shall take effect upon its passage.

The signatures below attest to the authenticity of this Report on HB 117-FN-A-LOCAL, an act establishing a uniform education property tax and a utility property tax, increasing the business profit and real estate transfer taxes, and including other sources of revenue to provide funding for an adequate public education and making an appropriation therefor.

*Conferees on the*

*Part of the Senate*

Sen. Hollingworth, Dist. 23

Sen. Fraser, Dist. 4

Sen. Larsen, Dist. 15

Sen. McCarley, Dist. 6

Sen. D'Allesandro, Dist. 20

*Conferees on the*

*Part of the House*

Rep. Lozeau, Hills. 30

Rep. Chandler, Carr. 1

Rep. Kurk, Hills. 5

Rep. Hess, Merr. 11

Rep. Burling, Sull. 1

**1999-1019CofC**

### AMENDED ANALYSIS

I. This bill establishes funding for an adequate education and creates an education trust fund.

The bill:

(a) Establishes a uniform education property tax and a utility property tax.

(b) Increases the rate of the business profits tax, the business enterprise tax, and the real estate transfer tax.

(c) Adds a tax on rental of motor vehicles.

(d) Dedicates revenues from future increases in the tobacco tax to the education trust fund.

(e) Designates certain tobacco settlement funds received by the state for education funding.

(f) Makes appropriations to the department of education and the department of revenue administration for the purposes of the bill.

II. This bill:

(a) Establishes a system for calculating and disbursing state grants for educational adequacy.

(b) Establishes an adequate education and education financing commission.

(c) Establishes a tax equity and efficiency commission.

III. The bill repeals the nuclear station property tax, kindergarten aid, and foundation aid.

SENATOR HOLLINGWORTH: Mr. President and members of the Senate, I rise in support of the Committee of Conference report on HB 117-FN-A-LOCAL. The Committee of Conference has spent long and difficult hours working to establish a constitutional taxation plan to fund an adequate education in New Hampshire, and I am proud to say that we have done that. I want to commend the committee and all those who have helped the committee for their hard work in forming this solution. HB 117 now presents us with the opportunity for which we have been working these many months, and that is to provide an adequate education for our students. There are those who will complain that there are provisions in HB 117 that they do not like. There are those who will say that it does not have any income tax or video gambling and that the property tax is higher than they like. There are those who will say that this general court should ignore the New Hampshire Supreme Court's ruling and do nothing at all. Let me say that this bill provides a method to provide funding of an adequate education for our children. That is our goal. There may be aspects of the bill that you and I do not like, but we must keep in mind that achieving an adequate education is crucially important to our children, to their future, and to ours. Because of these important priorities, I would ask you to put aside your differences of opinion and to vote for this bill. Let me tell you what is included in this bill. We fought for and won a low property tax rate at \$6.60 per \$1,000 instead of a property tax at \$8 per \$1,000. The bill includes a real estate transfer tax that raises \$26 million and a rental car tax at 8%, which raises \$10 million. It also includes a 1 percent increase on the BPT and a .25 percent increase on the BET, which were supported by the Business and Industry Association, the National Federation of Independent Businesses and the High Technology Council. Regretfully, it includes money from the tobacco settlement at \$40 million, and the first time signing bonus of \$16 million. Unfortunately, this was not the position that most of the Senate wished to take, but it was a necessary compromise so that we could move forward. Other funding sources are money from HB 1075 at \$31 million, existing state aid at \$101 million and surplus and/or revenues to be raised at \$42 million. Total education reflects a compromise of \$825 million for a per pupil adequacy level of \$4,220 per

student. This was accomplished in part by fighting for a lower statewide property tax rate at \$6.60. Thus, we are also proud to offer property tax relief to many of our citizens and keep the rate down for communities which are in donor areas. This bill provides a solution to the increasingly dire problems of teacher layoffs, probable bond rating downgrades, delayed school construction projects, special education and teacher unemployment insurance lawsuits and the inability of towns and cities to be able to send tax bills with a known education rate. This bill also meets constitutional mandates. We defined adequacy in 193-E (in 1998). This bill outlines a methodology for the funding of a constitutionally adequate education that is the result of careful, deliberate study and is reasonable and just. It provides for adequate education funding through a taxation scheme that is reasonable, proportional and uniform in rate throughout the state. It distributes needed educational funding to the property poor districts. The \$4,220 adequacy level, which provides a constitutionally adequate education. It provides for a uniform, reasonable and proportional statewide tax rate of \$6.60 per thousand. The phase-in to the donor districts has a just reason. That is: The phase-in ameliorates sharp increases in property taxes in donor towns, which will cause financial hardship to the poor people in those districts and which will cause potential commercial strife, as outlined in the intent section of the bill. The phase-in allows local governments and property owners to adjust. It is for a limited time period, and it is uniformly and proportionally applied within a distinct taxing district. I want to say that this was, I think, the most difficult task that I could possibly imagine before this body. This whole session we have been totally consumed with trying to find a solution. I will not pretend that we have all that we want or all that we wanted to achieve, but we must not let the shortcomings of the report blind us of what the Committee of Conference accomplished and accomplished in extreme and difficult circumstances. We began with New Hampshire ranking dead last in the nation in state aid to education. We have moved so far, that I can't even believe that we have actually accomplished that we are going to be proud to stand at funding adequate education at about 62 percent of aid to education. We will never be going back. We have come so far it is incredible that we have moved to this and that someday we will look back on this day and this year and we will recognize what we really have accomplished. I truly am grateful for having been given this opportunity to represent you on a Committee of Conference, and I hope that you will support this legislation knowing well that we are going to be discussing this repeatedly over the years ahead of us, making changes and amendments. I know that there are many things in here that will be difficult for you, but I am asking you to join with us in supporting this. I know that a particularly difficult decision for me was the one on the taxation settlement money. As you know, I had desired to see a portion of that go for our seniors for the pharmaceutical needs of the state and to lower their burden. I know that Senator Squires had the provision that I wholeheartedly endorsed and wanted to be behind. That was one of those difficult things that we, at the very last minute, finally had to give in on. I believe that while we searched to find the remaining money that we need to have to fund this, that we can look at that settlement money and maybe make changes in that. I know that there are others that have donor towns that they are very concerned about, but again, I ask that you stand with me today and vote yes. It is crucial that we do. Thank you again for all of your hard work. My committee and the Committee of Conference, our Committee of Conference...you have no idea how wonderful they have been. I told



my husband last night at 3:30 a.m...I said that it was like being on a shipwreck with a bunch of people, and you depended on them at every stage of the process, and I got to know the senators that I thought that I knew fairly well before in a totally different way. I am very proud to be part of this body and this Committee of Conference.

SENATOR F. KING: I had an opportunity of being here off and on during the process to recognize how much work and how much dedication the conferees have put into this process, and it was a difficult job. I will not be able to vote for this bill today, and I think that I owe the conferees that worked so hard an explanation of why I can't vote for it. In 1996 in October when I was running for the Senate for my second term, I was asked to do like we are all asked to do, which was to submit to a interview with the Manchester Union Leader. As you know they do a side-by-side on the candidates. I carry this around in my daybook and look at it from time-to-time because this was very important to me as I ran last time. I want to read what it says. It says, "In his bid for his second term, King said that he would not take the pledge to vote against any broad based tax plan. According to the Claremont lawsuit King said that if a judgement is returned against the state, it would be responsible for finding millions of dollars to fund it. "I believe that it will be settled," King said, "but which ever way it goes against the state, we will have to come up with a \$100 million and we can't do that with our funding sources. It would dishonest to say that we could make cuts of \$100 million, and I don't want to be restricted by a pledge." I did take a pledge when I ran seven years ago, I guess it is now, when I first ran for the Senate. I said that if I were elected, that I would not vote for any legislation that was not funded. I have tried to do that, I may not have done it all of the time, but that has certainly been what I have tried to stick to. Today we are being asked to vote on a piece of legislation that has at least \$40-\$100 million unaccountable revenue to balance this budget. I would suspect that it might be considerably more than that. It might even be the \$100 million that I identified two years ago. Last week an interim plan was not acceptable, today, I believe that this is an interim plan. It is obviously an interim plan because we don't have all of the money raised yet. I can't support a cigarette tax at 25 cents. I believe that it would be detrimental to businesses in my district and other parts of the state. I think that it could end up not raising the money that we think that it would raise because it would jeopardize other sources of funding, I would expect. I know that others disagree with me on that, but that happens to be my position. The \$40 million in the tobacco settlement is a real question. I don't think that we know for sure that we are going to get that money, and I do believe that, at the very least, we are going to be denying property tax dollars that should be going back to the property taxpayers in the state, through the counties claim on some of this money I would say at least 10 percent. That money doesn't belong to the county government, it belongs to the property taxpayers who actually are the ones who fund county government or a portion of the county government. The tobacco settlement, we all know, should not be used for education, it should be used to offset some of the cost of the results of smoking. The tobacco settlement initial payment probably would be all right. I know that it is identified as an item in the governor's budget, but on checking on it this morning, I understand that it is not part of the revenue stream for her budget, so I am no longer concerned about that. It is going to put the state's budget process in jeopardy. At

some point in time, if this bill passes, we are going to have to say to the university, or we are going to have to say to the Department of Health and Human Services, we are going to have to say to somebody, "you can't have your money because we are taking some of that money away." We are spending surplus that we may or may not have, and I just think that it would have been more appropriate to have simply reached into the revenue pot in the state and pulled out \$42 million from the liquor sales or whatever, and budgeted it in there, and then the budget conferees on the regular budget would have a better idea of what money would be available to fund the regular budget. So reluctantly, I will have to vote against this bill, Mr. President.

SENATOR JOHNSON: Senator King, thank you, you touched upon the cigarette tax and I just want to say that these numbers show that \$104 million of the new money will be in tobacco money, but beyond that, would you believe that the last nine months, the tobacco revenue is off 4 percent all ready, and with this type of increase that it will probably not be a reliable source of income?

SENATOR F. KING: I was trying to allude to that. I believe that is a very real possibility.

SENATOR JOHNSON: Thank you.

SENATOR HOLLINGWORTH: Senator King, **TAPE CHANGE** you and I had a conversation earlier in this session about both of our commitments to assure that whatever we did with education, that we would make sure that we did not impact on the budget. What I am asking you is, that I think that you understand my commitment to all of the programs that we have to the university system, and my guarantee to you that I would not let that happen. My question to you is do you believe that between you and I and the rest of the Finance Committee and Ways and Means that we can protect our budget and make sure that there isn't a hit on the budget, and that we would not allow that to happen, that we will do everything in our power to make sure that we do not rob the needed funds that we have in our budget, and that we will find the money that is missing in this legislation?

SENATOR F. KING: I believe that we will try to do that, but I am not sure that we will be able to.

SENATOR HOLLINGWORTH: Thank you.

SENATOR LARSEN: Senator King, you had indicated some concern about the cigarette tax increase, but would you believe that if you look at the Committee of Conference report, it in fact does not specify a cigarette tax increase? The revenues are outlined as potentially coming into the state, but it is still up to the Senate to pass HB 112 and to determine the level of cigarette tax increase?

SENATOR F. KING: Well, I have not read the conference report. I unfortunately, did not leave home until 6 a.m. this morning, so I didn't get here early. If that is true, then that reinforces my concern that the approach may be more like \$100 million instead of \$42 million, and therein lies the problem that I have. We are asked to vote for a bill that is not balanced. We have a budget to spend \$825 million, which happens to be the amount that was agreed to, that I agreed to a long time ago when we were discussing another bill, but the problem is that we don't have \$825 million worth of dependable revenue, and that is my problem and that is why I can't vote for this bill.

SENATOR LARSEN: Would you then join us in trying to find the additional revenue outside of the budget, because that is still an option? I don't believe that today's actions end the debate, but in fact allow for the continuation in the full Senate and House rather than in a small group of conferees who would not agree to additional revenues. Did you not state that, that you were hoping to see new revenues?

SENATOR F. KING: I would be glad to see this bill tabled and in 15 minutes I could tell you where to find the \$100 million and more too.

SENATOR LARSEN: Will you join me after this meeting to do this?

SENATOR F. KING: I will if this bill passes. I would be glad to do that.

SENATOR LARSEN: Thank you.

SENATOR TROMBLY: This bill is a cautious approach to a significant situation in the state of New Hampshire. Some who are voting no urged us to be cautious. It is not a radical or a wholesale reform of a tax structure of the state of New Hampshire. It is not the preferred plan that I did vote for and would vote for again, but to those of you who urge caution, then I think that you are successful in this Committee of Conference report. There are \$825 million good reasons to vote for this bill. Let me begin with number one. No, I am only kidding, Mr. President. There are \$825 million good reasons to vote for this bill for the taxpayers of this state and for the children we seek to educate. The tobacco tax settlement money is discussed time and time again on this floor as if that money was spent in some sort of a vacuum while the tobacco tax money is money that the states are taking back from the tobacco corporations because we spent money on things that could have gone to education. If we didn't have to spend money on the effects of smoking, we could have lowered our constituent's property taxes in the past, but we couldn't do that. So the tobacco tax money is not money coming back to the state to be spent exclusively on tobacco situations and to tobacco problems. It is a reimbursement to the state. Money that we could have spent on education in years past will be spent on education in the years coming. That is good for the taxpayers and that is good for the children of this state. Before we could go to the moon, the Wright brothers had to fly at Kitty Hawk, and before we could build skyscrapers, we had to leave the caves. This bill is an excellent start. It is an excellent start. Thank you, Mr. President.

SENATOR SQUIRES: I rise to offer a lament. I don't think that this is a cause for a victory or a celebration. It is a lament because first of all, it doesn't offer property tax relief that I can see to any substantial point. Secondly, it uses the tobacco funds in a way that is not appropriate. There are still 25 percent of deaths in New Hampshire from the consumption of tobacco and we can't seem to figure out a way to fund programs to stop that. It is particularly true in young women. This bill plants the seeds for significant trouble, and I will name seven of them. It seems unlikely that we will find sufficient funds to help people who are paying 50 percent of their income in rent. A bill that Senator D'Allesandro and I are trying to address, particularly in the cities. We will not be able to find the funds to take care of payments for children and the Medicaid program that need dental care. We will surely not be able to find the funds to help people with disabilities that are now getting paid a minimum wage. We will not be able to continue the Healthy Kids Program because the Healthy New Hampshire Foundation can't support that as it continues to grow. We will not be able to address the cost of pharmaceuticals as they continue to plague low income and elderly people, and we will not be able to expand programs to the elderly, as they require support, particularly in residential care. The



bill in fact, takes a broad-based problem, public education, and applies a narrow based solution. So narrow in fact, that it falls just proportionally on certain segments. What we have done in effect is to raid, extract from or imperil our general fund funding. So having said all of that, why vote for it? And the reason is strictly pragmatic. I was impressed this morning when the commissioner of revenue told me that tomorrow night, if there isn't a number submitted to a substantial number of, cities and towns in New Hampshire that we were going to have chaos. Those towns cannot begin the process of printing their tax bills, which they are required by statute to do, and get them out to the taxpayers in time for the semi annual payment due in June. So we are being asked to either vote no and promote that problem, or vote yes and bring about this cascade of problems that I related to you. But it seems to me that there is no point in going back and having another committee. There is no point in rereferring it. Now is the hour to respond. So I intend to respond, based on the information that I have from the Department of Revenue, with reluctance and dislike. I vote for this bill because I think that I can't stand here and watch next week as chaos begins to develop in the state of New Hampshire in its cities and towns. Thank you.

SENATOR PIGNATELLI: Mr. President and members of the Senate, growing up in the rural part of New Hampshire, and spending a good part of my life in Nashua near Hollis where there is still a significant number of farms. Living not too far from our waste treatment plant in Nashua, I feel that I have been around compost and sludge my entire life. I have seen it hoed and tilled and loaded into vehicles and spread across fields far and wide. But until today, I have never seen it tied up in such a pretty package. I am going to give my very reluctant support to this bill, because we must do something to solve this problem and we must do it today. You heard it everywhere. The one good thing from this entire debate is that the old thinking against a broad based tax has been revealed in all its true colors and those colors are not nice ones. They pit one community against the other and one group of students against another. This bill does not contain what the debate has shown that we need the most. Perhaps it will be a springboard for the development of a truly fair and stable source of taxation. I hope so. Thank you.

SENATOR LARSEN: I guess that I want to first respond to some of the Senator's comments. This package perhaps is not the prettiest package that you could bring to the Senate. This package contains compromises. This package does not contain some of the new revenues that we had hoped would offset budget or tobacco settlement monies that were being offered, but from the Senate conferees point of view, we fought, we fought...the fight that all of you asked us to. We fought the fight on using tobacco settlement monies. We fought against some of the issues that the funding sources that you see here. We fought for additional revenues. Because you don't see a beautiful package, it is because we fought...although we fought for those kinds of issues we were not successful in moving what is an entrenched point of view, the view that we could continue along to piece together bits and pieces, nickels and dimes, to make this package work. I again turn your ideas to the glass half full. When I came to this Senate, like Senator King, we had an idea that it was not the state's responsibility to pay for education. We had the position right here in this Senate that \$66 million was too much to spend to fund the Augenblick Formula that I brought forward my first year here. People over the years have stood for funding Augenblick and it did not happen. Once again we run into that entrenched point of view that stops us from moving to what we believe would be, the per-

haps the better way to fund education, but we have funded education at a level never seen before in this state. I think that we need to remember that. I think that we need to remember that we are recognizing that it is a fundamental right of each child to receive an adequate education regardless of where they live. We are beginning as a state to pick up the burden that we should have picked up a long time ago. Communities like Nashua, which never received Augenblick funding, are going to see Foundation Aid, are going to see School Aid funding at a level never seen before. That brings property tax relief. Communities around the state, my own community of Concord, \$900,000 was our last Foundation Aid level, this year it will be \$23 million with a net of \$11.9 million, never seen before. This bill allows us to guarantee that the tax bills go out. This bill allows teachers to know that their lives, the lives that they have dedicated to their children, will continue so that they can pay their health insurance benefits. I have heard from teachers who are dear friends of mine who had trouble getting loans for their children's college because we were not settling this issue. Today we have an opportunity to settle this issue, and we have an opportunity to make a statement from our state that we value education to the level that it is a fundamental right of every child. This is our statement today. I urge you to vote for this bill. I know that each of you has looked at your own communities and you know how important it is. I ask us to move forward. I also want to stand and commend the conferees of the Senate. Senator Hollingworth who held firm and worked so hard for her own community and for those in the state. The bipartisan effort from Senators Fraser and Klemm, McCarley and Below, who throughout the time brought us revenue figures, who helped us fighting for a cause that perhaps he would have liked to have seen a different outcome from. Senator D'Allesandro who stood and worked hard throughout the process to make sure that that funding happened. Each and every member of the committee through midnight hours worked their hardest to make this package the best that we could. I don't believe that this fight is over. I am not prepared to sit down and say that I am done. That \$40 million hole is not a hole that I plan to leave open. I am already believing that the House can work to bring about packages that might fill that hole. It is the Senate's opportunity to work on that as well. We could not get that hole filled out of Committee of Conference because of that entrenched attitude that it is not worth it to spend new money on schools, but we can make it happen still. If it doesn't happen this session, let's make it happen the next session. That is our job. That is why we are elected. I urge you to do what's right. Let's make this happen. Thank you.

SENATOR BELOW: I rise with great reluctance and ambivalence in support of the Committee of Conference report. There is much in here to dislike. I think that I would find it easy to vote no for this, but I am going to vote yes for the simple reason that further gridlock and impasse is going to begin to cost the students, teachers and the school boards of this state dearly. So, for pragmatic reasons, I think that it is important that we come to some resolution as endurable and unsustainable as it might be, and imperfect as it might be. But I do also think that this represents an important step forward in that there is an acknowledgement here that in owning up to the legislature's responsibility to fulfill our constitutional duty to provide for and fund an adequate education with proportional and reasonable state taxes. I concur with Senator Squires for the distaste for this commitment for the tobacco settlement money to this purpose. I fought against that right up to and somewhat beyond

the end of the negotiation process, but really, time ran out on us. One of the positive things that I think comes out of this is an acknowledgement that this is really the beginning of a process. The bill does set up two very important commissions. An adequacy commission and a tax equity and efficiency commission that have broad scopes of purpose that will continue to look at and examine these two very important issues and provide further recommendations for how we might proceed in improving what this base that we are going to have to build upon. Thank you.

SENATOR FERNALD: This is a bad bill, but I am going to vote for it. It is full of bad choices. I think that a statewide property tax as the primary source of revenue is a bad choice. We are simply shifting from one property tax to another and denying the people of New Hampshire the property tax relief that they want. We sued the tobacco companies to get money for health care and now we are not going to use it that way, and I think that is a mistake. I think that the other narrow based taxes that we have picked are not the way to go because we are going to be picking on several segments and they are going to be understandably upset. And we have a big hole in it as Senator Fred King said, and that is a problem. But I would say that the Committee of Conference got to a point where they could not get ten people to all agree on how to plug that hole. I think that we can pass this and find a majority in each house that can find a way to plug that hole whereas unanimity out of ten people was impossible. It is a bad bill and I am going to vote for it.

SENATOR GORDON: I don't have much to say because I think that I said most of what I wanted to say last Thursday. Like Senator Pignatelli, I grew up in the country and know a little bit about compost and sludge and maybe the difference is that when I grew up in the country we didn't call it compost or sludge. We called it what it was. I don't want to stand up and disparage the conferees, because I think that the conferees worked very hard with what they had to work with. They put their time in and they work very hard. Frankly, I am not bothered about compromises, because I know that that is the way that you get things done in the political process, is that you compromise. I am not bothered by compromises, but what I am bothered about is by holes. What I see coming back to us has holes in, as has been previously mentioned. I agree with Senator Fernald, it is a bad bill. We have just come to a different conclusion and while he can vote for it, I can't. I agree with Senator Trombly that there are 825 million good reasons to vote for the bill. In fact, I would have no problem voting for a bill for \$825 million and would be happy to do so, but my mother taught me, back in the country, that it is not just what you do that is important, how you go about doing things is just as important. I guess that is why I am not going to vote for the bill. I have a message here from a lady that I don't know who she is, I have never met her before, and all that I know, is that she is from Plymouth. She left a message here and wanted to make sure that I got it before the session this morning, and her name is Julie Fernino and she is from Plymouth, and she says that she is concerned that the dollars would be taken from the Health and Human Services Department, and the general fund would be taking from those who need it the most. And in large letters, "This is not a solution." I guess that I agree with her. I think that we would be better off to pass a bill that says that we are going to fund education for \$825 million and then deal with how we are going to fund it in the general budget process, because that is what appears to be what we are going to have to do anyway. Why not just pass a bill that says that we have decided that we are going to spend \$825 million on edu-



cation and then deal with it in the budget process, because it appears from what I can see, that is what is happening. I would rather see it done that way. I am told that the reason that I have to vote for this bill today is because otherwise our communities are going to be in crisis. But I would prefer if we have reached an agreement, that we can have a property tax at \$6.60, I would rather see us today put out a bill that says that we will have a property tax at \$6.60. Send it out to the communities and let them know what the tax rate is going to be, and then for the remainder of the money that has to be made up for that \$825 million, let's deal with it in the budget process. To me, that makes more sense and that would solve our local community's problems. I know that it doesn't solve everybody's political problems, but to me, that would make a more reasonable approach in dealing with this and fit with our other budgetary needs, which I know are going to be much. I don't like \$6.60 because I am going to have to go out and tell six of the towns that I represent why they are going to be funding and sending money down to Amherst. I know that they are not going to like that. So I am going to vote against it, and I guess that I am just not that desperate at this point in time where I feel that this is the only solution, and that I have to vote for it to make it happen.

SENATOR LARSEN: Senator Gordon, you had expressed a concern and heard from a constituent on the concern that somehow the budget would be raided, particularly Health and Human Services may be affected as a result of the shortfall. Would you be willing to work towards finding a revenue source so that in fact no more monies would come out of the budget? That is what we couldn't get from the conferees, but we hope to get through cooperation in a bipartisan fashion to fill that gap, not using further budget sources. Will you work with me on that, work with us?

SENATOR GORDON: Yes. You can count on the fact that I will work with you. I am glad that you asked that question, because this is what bothers me. The whole idea of passing this bill is so that we would be dedicating a certain revenue stream for education. That is the whole idea of doing this bill separate from doing the budget, so that we could guarantee a revenue stream for education. What has come out of this is the fact that we haven't done that. We have picked up some bits and pieces, but basically what we have said is that we are going to fund this the way that we fund the Augenblick, okay? We are only going to come up with part of the money, and then we are going to figure out later, how we are going to come up with the other money. I just don't think that is right. The fact is, you and I both agree that there needs to be some strong, solid source of funding for education, and in all probability, that needs to be a broad based tax, and that is what we ought to be passing. If that is the right thing to do, then we ought to pass it and send it on over to the House and let the House go out and explain to the people of New Hampshire why it is not a good idea.

SENATOR LARSEN: Thank you.

SENATOR MCCARLEY: I rise as one of the conferees in support of this bill. I guess after hearing a lot of comments today about concerns that people have, they are very legitimate and they are very genuine. Until yesterday morning, we continued to look for a way to bring you something, quite frankly, that had no holes in it and fulfilled all of the things that you wanted us to be able to do. But one of the things that we heard over and over in the debate in the discussion was, "well our side can't sell this and your side can't sell that to the rest of our members." So we finally said, how much can we agree to that we can hopefully convince

enough people on each side of this building to support and then acknowledge that the debate has to go forward. The debate has got to go forward just as Senator Gordon just suggested. Last week, or it may have been the week before, I have lost track of time, but there was a statement made on the floor regarding the fact that everybody here has put in a lot of hard work. Senator Fred King put in an enormous amount of work offering a solution. Senator Gordon did, Senator Krueger and Senator Brown brought forth recommendations. All of us in our caucus's have brought forth ideas for ways to solve this problem, and the bad news or in my opinion, the good news, I like to be optimistic is, we are going to have to keep right on doing that because we have created an entitlement. We have an entitlement of \$825 million to go out to the school districts in this state. That is a good thing. That is a good start to what we should be doing for the school children of this state, but it is indeed the first step. We certainly have a long way to go. We have commissions in place, particularly the adequacy commission, that is going to have to spend the time to build the kind of support and good solid data and rationale for that cost of an adequate education, but we can do that. We know that we can do that. This allows us to put off what, I think, is absolute catastrophe for this state. It allows us to get on with the job of finishing what we have to do. I look down the list and I say, is this absolute significant property tax relief? In many of our communities, our communities that are most needy communities, the very people we heard ourselves talk about in our concerns, and what they might lose out if we raid the Health and Human Services budget. Right now there will be by virtue of this legislation, help for those communities. We are going to be committed and have the political courage to guarantee that we don't make any further raid and therefore, those people will be protected by what we are going to do. So I would ask you to look at this carefully and feel that we are indeed making an enormous first step for the state of New Hampshire and for the school children. Thank you.

SENATOR D'ALLESANDRO: I, too would like to commend my colleagues on the Committee of Conference for their diligent work and for the staff that worked so diligently preparing the documents. I don't think that I have ever seen the State House so full of energy and busy where so many people were working so hard to get something done. I think that is a credit to their dedication and certainly a credit to each one of the conferees for the kind of work that they did. It is very ironic that today, when we honored Mrs. Freeman on her 100<sup>th</sup> birthday, a woman who, when she was born, couldn't ride on the front of the bus. A woman **TAPE CHANGE** talking about dramatic change. We are talking about a state that in the past had been very hesitant to support education, is making a step forward in an attempt to provide an adequate education for about 200,000 youngsters in this state. Now that is a dramatic change. We are taking one step forward to initiate that change. Is it the end? Absolutely not. We know that. We have in this piece of legislation, two commissions. One on adequacy and education finance commission, and another, a tax equity and efficiency commission. Both to report back, one in December of 2000 and one in December 31, 1999. But the situation is that we all know what is needed. We have taken an initial step to addressing that. How did we do it? We did it the way that legislatures do it. We did it the way legislators do it. We met with a Committee of Conference. Was it perfect? No. Did we have to give? Yes. But what did we do? We established a tax rate of \$6.60 a thousand. That does provide tax relief. Genuine tax relief to a significant number of communities in this state. We set an adequacy number of \$825 million. That is an average of \$4,220 per student. Greater

dollars going back to our communities than have ever gone back in the history of this state. The tobacco settlement money, I was not in favor of taking the tobacco settlement money. I think that it is the wrong thing to do, but it is something that we had to do to make this thing whole. This is a short-term item. We must work consistently to make this better. But the only way that we can do that is to get something started. As I say, there are 200,000 reasons why. Those are the students K-12 in the state of New Hampshire. We are making it possible to make that change a reality. I support the legislation. I will vote for the legislation and would hope that my colleagues see fit to do the same. Thank you very much.

SENATOR WHEELER: I want to add my thanks to the conferees. As a non-conferee member, I have been incredibly impressed with the dedication, the hours, the thoughts and the willingness to work with people of different points of view that each of you has exhibited. You have all of our thanks. I agree with a great deal of what has been said on the floor. Certainly I share Senator Squire's concerns about making sure that we meet the needs of the Health and Human Services. I think that we continue to have that obligation. I think that we have a lot to be proud of in what we have accomplished this year. As I have listened to the very serious issues that we have debated, I have learned a great deal. Your remarks, your thoughts, have helped me sharpen and focus my own opinions even when I have disagreed I have learned and I have grown, and I thank you all for that. I think that we have accomplished a great deal as a Senate. I think that this bill, this statement, that we, as representing state government, that we have a responsibility to give an adequate support to primary and secondary education in our state, and that is an enormous step forward. I never thought in my lifetime that I would see the state be willing to accept that obligation. That is very positive. I agree fully, that this is the beginning and not the end of the process. I want to quote again from William James because this means a lot to me right now, "If things are ever to move forward, someone must be ready to take the first step and assume the risk of it." Well, things have to move forward, we don't have any more time. We know that they must move forward today. We have absolutely run out of time. Someone must be ready to take the first step. That is us. We have to take the first step, and it is the first step and assume the risk of it. Yes, there is a risk. There is a lot in it that we can be criticized for. We are assuming a risk. It is courageous step up to vote for this piece of legislation, but it is a step that needs to be taken. From a very personal point of view, and I imagine that you have received similar phone calls. I received a phone call from the parent of a developmentally disabled child two days ago, and he was in a panic because he said, "we won't have any possibility of an educational program for my child this summer if something doesn't happen by May 1, I will be told that she will not be able to have the program that she needs." I told him that we were going to solve this, don't you worry, I guarantee that we are going to do it. I made a promise, and I think that you have all shared in that promise to the people in our communities who are depending on us to do something and to do it now. So I urge you to join me in voting for this. Thank you.

SENATOR J. KING: I am going to support the bill and, if you ask me, why? It is not the greatest bill that has come out of the process, but that is the process. We have a Committee of Conference and it is nothing new. We didn't instigate it this year. It has been around for 100 years or more. Then we have a choice, we can't change it, and we either accept it or kill it. We can't afford to kill it. Not because it is not a great, great bill or not a bad, bad bill, but because what it might do to the localities, to our



communities out there. Dilemmas that they are already in. Are we going to punish them even more by not taking a stand today? Let's not give more cruel and unusual punishment to our locals, our schools, our students and those people out there in education. Let's pass this bill and get it moving, and then if there are faults, correct them. Thank you.

SENATOR COHEN: So much of what I have to say has already been said, recognizing how difficult everybody feels today, how reluctant we all feel to vote one way or another. We all feel that. We all recognize that this is not a perfect plan. At the same time, I would also echo the sentiments of everyone that I want to sincerely thank the conferees that have worked well beyond and above the call of duty. I must say especially Senator Hollingworth, in fighting for the issues that I care about so much, the property tax issue. I recognize that the property tax rate is down well below what the House wanted, and I sincerely appreciate that. You can tell where I am going with this as I commend, I reluctantly am not going to vote for this. Everybody is voting reluctantly for it, reluctantly against it. I don't think that anyone is enthusiastic either way in voting for it or against it. I am very pleased that this will temporarily end the crisis. That the debate over creating a fair tax structure, one that is fair to all New Hampshire communities is only beginning, and I intend to make sure that that discussion gets as much care and attention as the current crisis has drawn. I agree with Senator Larsen that we have to solve this issue. There is a fundamental right of each child to have an adequate education, at least an adequate education. I certainly agree with my colleague, Senator Below, when he mentioned his reluctance and ambivalence and I feel that as well. We have to end this crisis. I am very thankful that the crisis is being ended; however, I remember early on in this process that governor Shaheen spoke about how we should not bring down some towns to raise others up. She was right then and I believe that is true. I have to tell you that the towns in my district, regardless of their individual ability to pay, are bearing a disproportionate share of the burden. Portsmouth is not a wealthy town, yet it is becoming a donor town. Now grant it in the first year or two it is not much of a hit, I don't like going down that path. I am very concerned about that becoming a donor town, 58 percent of the people in Portsmouth are renters. Portsmouth starts on the path of going down a donor town. There is no property tax relief. Property tax relief was supposed to be part of this solution. Yes, I recognize that we need to do that, we need to work on that down the road and I am eager to work with my colleagues on both sides of the parties to solve this. I also have to say that because property values are high in many of my towns, regardless of the individual's ability to pay, should they be penalized because the property values happen to be high? They are not hit very much at first, but we are going down that road. The phase-in is a good thing the first year, but I am concerned about how far it goes. I recognize that we need to do something, that I believe that there will be success well beyond the five-year period that we will have a much better system in place. We have a responsibility to the state of New Hampshire, to our children, to our teachers to continue to work on achieving a fair taxation system, and I intend to help with that. I feel very strongly that we must replace this plan sometime in the next two years if not sooner with something that treats all New Hampshire citizens fairly and doesn't require donor towns to take a disproportionate hit regardless of their individual's ability to pay. Thank you.

SENATOR KLEMM: I rise in favor of this bill. I rise in favor for a number of reasons. First of all, the passage of this bill will prevent disruption to our school districts. It will allow our teacher contracts to be re-

newed, new teachers to be hired, supplies can be ordered and there will be no disruption to property tax billings in our cities and towns. Our communities' capital projects can proceed, and hopefully, we can avoid some lawsuits. It has been mentioned here that this bill provides no property tax relief. Well, my communities have been donor towns for years. They send up their sweepstakes money, their rooms and meals money and receive absolutely nothing back from the Augenblick Formula. This bill delivers \$10.4 million to my district in new money that my district has not received before. We have talked about holes in the budget. Well it may come as a surprise to a couple of you, but I do have a few ideas about how to fill that hole. We have a hole in the budget now, think what that hole would be come Monday morning when the state is hit with a bunch of lawsuits. I think that is a real legitimate concern. So, Mr. President, I ask my colleagues to vote in favor of this bill and to continue to work with me as well as I will work with them to find a solution to the funding of this bill.

**SENATOR FRASER:** Mr. President and members of the Senate, prior to last Thursday, you were three months older than me, well it is no longer true. I have to acknowledge to you, Mr. President, that I was privileged to serve on the Committee of Conference and represent the Republican Party. So all of my remarks now are going to be addressed to my Republican colleagues. What I want to tell you all is that everything that has been said is absolutely true. This is not a perfect bill. Nobody for any reason professed that it was. We tried and we tried desperately to come up with a bill that would balance and that all of the money would be in place, but we just couldn't get that accomplished. I think that if any of you that were there this morning when commissioner Arnold spoke, this is a real serious concern that we all have. I guess what I am trying to say is that you had to be there to understand what we went through and what fear that we had of what could happen as Senator Klemm just said about what could happen Monday morning if we don't get this thing done today. I am getting tired of saying no to everything, thank heavens, and I am going to support this bill today. I readily acknowledge, as have all of the other speakers, that this is not a perfect bill, especially those who were on the Committee of Conference. But you should vote for it. You should vote to get this process started. You shouldn't be afraid to vote for it. You shouldn't say that you couldn't sit still for this bill because there are a lot of things in here that I don't like about it. All it is is a first step, and I promise you that that is all that it is, it is just a first step. We have to get something started, otherwise our children are the ones that are going to suffer from it. So please, my Republican colleagues in the Senate, reconsider your position and seriously think about supporting what we have come up with in the Committee of Conference report.

**Senator Hollingworth moved adoption.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Pignatelli.**

**The following Senators voted Yes: Fraser, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Squires, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth.**

**The following Senators voted No: F. King, Gordon, Johnson, Roberge, Francoeur, Krueger, Brown, Cohen.**

**Yeas: 16 - Nays: 8**

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Senate Bills sent down from the Senate:

**SB 65**, establishing a study committee to review field activities conducted by the department of health and human services relative to children, youth and families.

**SB 130**, establishing a committee to study issues regarding procedures and standards for selection and supervision of court-appointed guardians ad litem.

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in its amendment to the following entitled House Bills sent down from the Senate:

**HB 210**, reinstating the corporate charter of C.A.B. Real Estate, Inc.

**HB 358**, relative to the term of office for members of the state board of education.

**REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bills:

**HB 207**, directing the office of state planning to conduct a study of the effects of sprawl in the state and making an appropriation therefor.

**HB 238**, allowing the production and sale of American ginseng in the state of New Hampshire and making an appropriation therefor.

**SB 65**, establishing a study committee to review field activities conducted by the department of health and human services relative to children, youth and families.

**SB 130**, establishing a committee to study issues regarding procedures and standards for selection and supervision of court-appointed guardians ad litem.

**Senator Disnard moved adoption.**

**Adopted.**

**REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bills:

**HB 90**, removing the prohibition on adoption and foster parenting by homosexual persons.

**HB 218**, reinstating the corporate charter of Approved Industries Inc.

**HB 229**, changing the registration fee requirement of the commercial feed law.

**HB 288**, relative to the committee to study land management, protection of farmland, rural character, environmental quality and sprawl.

**HB 307**, establishing a committee to study the negotiated risk agreements when patients desire to remain in a facility over the recommendations of the department of health and human services.

**HB 355**, relative to the dredging of harbors and channels.

**HB 418**, relative to accounts and reporting dates of certain funds in the fish and game department.



**HB 490**, enabling cities to permit the mayor to vote at city council meetings

**HB 520**, relative to an open season for chukar partridge.

**Senator Disnard moved adoption.**

**Adopted.**

**1999-0966-EBA**

**03/10**

**Enrolled Bill Amendment to HB 92**

The Committee on Enrolled Bills to which was referred HB 92

**AN ACT** exempting permanently disabled veterans from the requirement of reestablishing their disability status for the division of motor vehicles every 4 years to prove eligibility for special license plates.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE**

**Explanation to Enrolled Bill Amendment to HB 92**

This enrolled bill amendment corrects a grammatical error.

**Enrolled Bill Amendment to HB 92**

Amend section 1 of the bill by replacing line 6 with the following:  
*service-connected disability. Such proof shall only have to be made upon initial*

**Senator D'Allesandro moved adoption.**

**Adopted.**

**1999-0967-EBA**

**03/10**

**Enrolled Bill Amendment to HB 79**

The Committee on Enrolled Bills to which was referred HB 79

**AN ACT** relative to reports to the bank commissioner and to safe deposit box openings.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE**

**Explanation to Enrolled Bill Amendment to HB 79**

This enrolled bill amendment changes references to federal regulations to reflect recent revisions.

**Enrolled Bill Amendment to HB 79**

Amend RSA 384:36 as inserted by section 1 of the bill by replacing lines 3 and 4 with the following:

Reserve Board's Regulation H(12 CFR 208.62), Federal Deposit Insurance Corporation regulations Part 353 (12 CFR 353.1 et seq.), and National Credit Union Administration regulations section

**Senator D'Allesandro moved adoption.**

**Adopted.**

### COMMITTEE REPORTS

**HB 383**, relative to the authority of the department of environmental services to assign air pollution allowances and credits. Environment Committee. Vote 4-0. Ought to Pass, Senator Below for the committee.

**SENATOR BELOW:** Mr. President, I rise in support of HB 383. The 1990 reauthorization of the federal Clean Air Act introduced the idea of emissions reduction credits and the trading of such credits. This concept recognizes and rewards sources that reduce their emissions beyond regulatory requirements. This allows a "market" of emissions reductions to develop, thereby ensuring that specified environmental benefits are achieved at the lowest possible cost. As the concept, of trading credits is refined, DES finds that greater clarity is warranted relative to its authority to effectively administer an emission reduction credits trading program for the variety of emission reduction credit mechanisms that exist today. House Bill 383 makes technical refinements. It should significantly improve the Department of Environmental Service's regulatory processes relative to new projects that promise substantial environmental and economic benefits to the state, such as the new gas-fired electric plants. I urge support of the unanimous committee report of ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 495-FN-A**, relative to reauthorizing the motor oil discharge cleanup fund and increasing the fuel oil discharge cleanup fund fee, allowing coverage for discharge prevention, and allowing reimbursement for replacing substandard tanks. Environment Committee. Vote 4-0. Ought to Pass, Senator Russman for the committee.

**SENATOR RUSSMAN:** This bill increases the available funding to homeowners and businesses to the cleanup cost of fuel oil contamination when no private insurance is available. The bill reduces a risk of homeowners and businesses being financially devastated by catastrophic release to the environment. It also has an amendment, which allows for upgrading and replacing substandard tanks up to an amount of \$1,000 which DES is also in support of. I urge support of the bill.

**Adopted.**

**Referred to the Finance Committee (Rule #24).**

**HB 558-FN**, relative to solid waste management. Environment Committee. Vote 5-0. Ought to Pass, Senator Russman for the committee.

**SENATOR RUSSMAN:** This bill provides for improvements in the toxics in packaging law, recording of solid waste orders and providing sufficient time for the department to review and incorporate comments received during a public hearing.

**Adopted.**

**Ordered to third reading.**

**HB 327-L**, allowing municipal governing bodies to enter into lease agreements for equipment. Executive Departments and Administration Committee. Vote 2-0. Ought to Pass, Senator Roberge for the committee.

**SENATOR ROBERGE:** Mr. President and members of the Senate, it is current practice for municipalities to enter into lease agreements for equipment. This bill will clarify that the approval of funding such as an agreement will be by simple majority vote of the local legislative body

when the agreement in question contains a non-appropriation clause. Non-appropriation clauses are not considered debt. Agreements that do not contain non-appropriation clauses still require a two-thirds vote by the local legislative body. The committee recommends ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 163**, establishing a commission to study methods for reducing violent incidents involving children and guns. Judiciary Committee. Vote 7-0. Ought to pass with amendment, Senator Cohen for the committee.

**1999-0949s**

**05/10**

### **Amendment to SB 163**

Amend paragraph I as inserted by section 2 of the bill by replacing it with the following:

I. The members of the commission shall be as follows:

(a) Two members of the senate, who shall be selected from the judiciary committee, appointed by the president of the senate.

(b) Two members of the house of representatives, who shall be selected from the criminal justice and public safety committee, appointed by the speaker of the house.

(c) The commissioner of the department of safety, or designee.

(d) The commissioner of the department of education, or designee.

(e) The attorney general, or designee.

(f) The president of the County Attorneys Association, or designee.

(g) A representative of a sportsman's club, appointed by the governor.

(h) The president of Gun Owners of New Hampshire, or designee.

(i) A representative of the Injury Prevention Center at Lahey-Hitchcock Medical Center.

(j) A representative of the New Hampshire School Boards Association.

(k) A representative from the New Hampshire School Administrators Association.

(l) A representative from the New Hampshire Association of School Principals.

(m) A representative from the New Hampshire Congress of Parents and Teachers, Inc.

(n) A pediatrician from the New Hampshire Medical Society.

(o) A representative from the New Hampshire Firearms Safety Coalition.

(p) A representative from New Hampshire Cease Fire.

**Recess.**

**Out of Recess.**

SENATOR COHEN: This is about gun violence. I don't think that anybody can deny that there is a problem with gun violence and children. Littleton, Colorado is any town, U.S.A. It could have been anybody's kids. We are all sickened beyond words over this latest in a long series of gun violence in our schools. This was hardly the first such incident. Pearl, Mississippi; West Paducah, Kentucky; Jonesboro, Arkansas; Edinboro, Pennsylvania; Springfield, Oregon; and then last week Littleton, Colorado; then last night Alberta, Canada. We, in this body, have the power and the responsibility to take action. We may have had other opportunities, I have to wonder how many more gut wrenching teen tragedies do we need before we do something? I hope none. As you can see, mem-



bership in the study commission... and I have a floor amendment adding a couple of more bodies to this, or groups, I should say. A bad choice of words, a terrible choice of words. Not a great day here. Senate Bill 163 establishes a wide ranging committee to study methods for reducing gun violence among children. It includes many perspectives including Gun owners of New Hampshire, the floor amendment, which I hope that we have, includes high school students and Educators for Social Responsibility. I am certainly open to more. Representative David Welch in the House offered to put Sturm Ruger on. The manufacturer of guns. I am fine with that. This bill, of course, was put in before the latest tragedy, and it is a very modest action and it may be too modest. We need to begin to address the problem with the best combination of perspectives, to come to an agreement on the best methods for dealing with the horrifying fact of gun violence among children. This bill offers no immediate solutions, but does recognize the all too obvious fact that there is a problem of children and gun violence. I hope that this committee will examine the child access issue. Child access prevention laws have reduced deadly incidents in other states, and I hope that we will look at that and we will make a well researched and appropriate recommendation including, but not limited to, child access prevention laws, large capacity magazines and other issues. I don't know what the committee is going to recommend. Certainly gun laws are not the only solution. We have a culture of violence and we have people with expectations for instant solutions of all problems. This is part of the solution here. The point is for all stakeholders including high school students, to listen, to gather information, to make recommendations for future legislation, and to then discover the most effective steps that our state and communities can take to keep our schools as the dependable safe havens for learning that they are supposed to be. Some have suggested that this may be a knee jerk reaction. I don't think so. We must react. We must react. These are our children getting killed by other kids with guns. We cannot do nothing. Before the memory of Littleton, Colorado fades, before the next such incident, we who have the power and the responsibility of our communities, we have to focus on addressing what is clearly a deadly problem. We should act before the passage of time numbs our memory. The problem will not cease when it is no longer in the headlines. As Littleton Colorado shows, it could be anybody's kids. There have been so many terrible incidents, how many more do we need? I hope and I pray none, please let's pass this first step for protecting our children from gun violence. Thank you very much.

SENATOR PIGNATELLI: Mr. President and members of the Senate, I will support this bill, but I have no illusions. The solution to school violence and probably all violence is one that will not come easy. We know one thing for sure though, and that is the importance of parenting. With both parents working, with violent music, movies, video games and of course guns everywhere, the burden is even higher on parents to make certain that they find the time for their children. This is especially true in a child's first years of life. Parents must be available to listen to, to talk with and to monitor the activities of their children. They owe it to themselves, their children and all of the rest of us. Thank you.

SENATOR F. KING: We all were terribly affected by the incident in Colorado and we all have had the opportunity to read the newspapers and watch the television. The weekly news magazines are full of information. I think that this bill is a step in the right direction, but I think that we need to look much further into this issue than just pointing at guns.

Clearly, there were a great number of clues in the reaction of these two boys who caused this terrible incident. Someone should have recognized that. I am a supporter of the Right to have Guns, and those who feel threatened by that say that we shouldn't change our constitutional right. I think that it is time to take a look at other parts of our constitutional rights. Video games, television programs, movies, all lead down the road to kids doing what these kids did. Until we are ready to deal with that issue, I don't think that we can stop violence. There will always be guns available for whoever wants to do something like this. They should be...all gun owners should recognize that they need to keep their guns locked up. I have a collection of guns and they are under lock and key, and the ammunition for those guns is in my garage and in a locked metal cabinet. That is the way that gun owners should operate. The issue here is not guns, the issue is our culture. Senator Pignatelli said it very well, I don't think that we can legislate parental supervision, but we have to do something about the access of violence in the media that is so readily accessible to our kids. My grandchildren have these video games and I watched what they are playing on those video machines, and it is terrible, and they have responsible parents who keep a close look on what their kids do. But the fact is, as a grandfather, I don't think that they ought to be playing those games. We shouldn't be advertising them and they shouldn't be making them available to the kids. Until we can deal with that, I don't think that we can stop what happened in Colorado. I would hope that this committee would broaden the spectrum of what apparently the bill intends to do, and not to just think about guns, but to think about the entire problem. If we need to make the committee larger, then you should do that. This is a good way to start the process, but you are dealing with a very small part of the problem.

**Recess.**

**Out of Recess.**

**Question is on the adoption of the committee amendment.**

**A roll call was requested by Senator Fernald.**

**Seconded by Senator Francoeur.**

**The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Squires, Pignatelli, Francoeur, Larsen, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.**

**The following Senators voted No: Roberge, Krueger, Brown.**

**Yeas: 21 - Nays: 3**

**Amendment adopted.**

**Senator Cohen offered a floor amendment.**

**1999-1022s**

**05/10**

### **Floor Amendment to SB 163**

**Amend paragraph I of section 2 by replacing it with the following:**

**I. The members of the commission shall be as follows:**

**(a) Two members of the senate, who shall be selected from the judiciary committee, appointed by the president of the senate.**

**(b) Two members of the house of representatives, who shall be selected from the criminal justice and public safety committee, appointed by the speaker of the house.**

- (c) The commissioner of the department of safety, or designee.
- (d) The commissioner of the department of education, or designee.
- (e) The attorney general, or designee.
- (f) The president of the County Attorneys Association, or designee.
- (g) A representative of a sportsman's club, appointed by the governor.
- (h) The president of Gun Owners of New Hampshire, or designee.
- (i) A representative of the Injury Prevention Center at Lahey-Hitchcock Medical Center.
- (j) A representative of the New Hampshire School Boards Association.
- (k) A representative from the New Hampshire School Administrators Association.
- (l) A representative from the New Hampshire Association of School Principals.
- (m) A representative from the New Hampshire Congress of Parents and Teachers, Inc.
- (n) A pediatrician from the New Hampshire Medical Society.
- (o) A representative from the New Hampshire Firearms Safety Coalition.
- (p) A representative from New Hampshire Cease Fire.
- (q) A high school student from each of the 5 regions of the New Hampshire School Administrators Association, selected by the chairperson of that region.
- (r) A representative from New Hampshire Educators for Social Responsibility.

SENATOR COHEN: This floor amendment simply adds "five high school students", which I think in light of recent events is probably a good idea. I think that it is a good idea that we hear from them in the process and that they be actively participating as well as "educators for social responsibility", which also ought to have a seat at the table here.

#### **Floor Amendment adopted.**

#### **Ordered to third reading.**

**SB 227-FN**, establishing a gambling business felony. Judiciary Committee. Vote 4-0. Ought to pass with amendment, Senator Fernald for the committee.

**1999-1000s**

**08/10**

#### **Amendment to SB 227-FN**

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Business Conducting Illegal Gambling. Amend RSA 647:2 by inserting after paragraph I the following new paragraph:

I-a.(a) A person is guilty of a class B felony if such person conducts, finances, manages, supervises, directs, or owns all or part of a business and such person knowingly and unlawfully permits gambling on the premises of the business.

(b) A person is guilty of a class B felony if such person knowingly and unlawfully conducts, finances, manages, supervises, directs all or part of any gambling activity which:

(1) Has had gross revenue of \$2,000 in any single day; or

(2) Has been or remains in substantially continuous operation for a period in excess of 10 days; or



(3) Accepts wagers exceeding \$5,000 during any 30 day period on future contingent events.

2 Forfeiture. Amend RSA 647:2, III to read as follows:

III.(a) **Any property including money, proceeds, [aH] imple-**ments, equipment, and apparatus used **or gained** in violation of this section shall be forfeited.

(b) **Any state, county, or local law enforcement agency shall have the authority to seize such property in the manner provided in RSA 617.**

(c) The proceeds of any property forfeited pursuant to this section, which is seized pursuant to a petition filed by the department of safety, division of state police, shall be made available to the department of safety, division of state police, for the purpose of enforcing this section. Such funds shall be nonlapsing and continually appropriated to the department of safety, division of state police.

3 Effective Date. This act shall take effect January 1, 2000.

1999-1000s

### AMENDED ANALYSIS

This bill:

I. Makes it a felony for a person to knowingly and unlawfully permit gambling on the premises of a business conducted, financed, managed, supervised, directed, or owned by such person.

II. Makes it a felony for a person to knowingly and unlawfully conduct, finance, manage, supervise, or direct any gambling activity of a certain magnitude or duration.

III. Requires persons convicted of illegal gambling operations to forfeit any property including money and proceeds used or gained by such gambling operations.

SENATOR FERNALD: The state of the law in New Hampshire is that gambling is illegal. There are of course exceptions, the state lottery, the racetracks and nonprofits can do certain gambling activities such as raffles and bingo. There is a good reason why gambling is illegal. It is a social ill. The success of our society and the economy depends on work and thrift and investment, and gambling encourages people to throw their money away in hopes of making it rich quick. Gambling has long been illegal in New Hampshire. It is illegal in all of the other states to a certain degree for the same reasons. Under our current law, if you gamble illegally, you are guilty of a misdemeanor. Similarly, if you run a gambling operation, if you are the numbers runner or whatever they call it, the bookkeeper, the bookmaker, it is still just a misdemeanor. This bill would make it a Class B felony for those who run the gambling operations. The people who have the illegal slot machines or the people who do the bookmaking, bookkeeping. There have been some concerns raised about particular language in this bill and I would like to make a motion so that we can have further discussion on some of the details and not the general policy.

**Senator Russman moved to recommit.**

**Adopted.**

**SB 227-FN is recommitted to the Judiciary Committee.**

**SB 94**, relative to absentee voter affidavits. Public Affairs Committee. Vote 6-0. Ought to pass with amendment, Senator Trombly for the committee.

1999-0969s

03/01

### Amendment to SB 94

Amend the bill by replacing section 2 with the following:

2 Elections; Absentee Voting; Absentee Ballots and Related Materials; Absence, Religious Observance, and Disability; Envelopes; Affidavit Removed. Amend RSA 657:7, II-III to read as follows:

II. ~~[Affidavit]~~ Envelopes of sufficient size to contain the ballots ~~[on which shall be printed the following:~~

~~(a) Absence from City or Town. A person voting by absentee ballot because of absence from the city or town in which he is entitled to vote shall fill out and sign the following certificate:~~

I do hereby certify under the penalties of perjury that I am a duly qualified voter in the city or town of ..... , New Hampshire, in ward ..... ; that I will be absent on election day from said city or town and will be unable to vote in person; that I have carefully read (or had read to me because I am blind) the instructions forwarded to me with the ballot herein enclosed and that I personally marked the ballot within and sealed it in this envelope (or had assistance in marking the ballot and sealing it in this envelope because I am blind).

.....  
(Signature)

~~(b) Absence Because of Religious Observance or Physical Disability. A person voting by absentee ballot because of religious observance or physical disability shall fill out and sign the following certificate:~~

I do hereby certify under the penalties of perjury that I am a duly qualified voter in the city or town of ..... , New Hampshire, in ward ..... ; that I will be observing a religious commitment which prevents me from voting in person or that on account of physical disability I am unable to vote in person; that I have carefully read (or had read to me because I am blind) the instructions forwarded to me with the ballot herein enclosed and that I personally marked the ballot within and sealed it in this envelope (or had assistance in marking the ballot and sealing it in this envelope because I am blind).

~~(Signature) .....~~

III. Return envelopes of size sufficient to contain the preceding envelope addressed to the town and city clerks of the state in which absentee voters shall return their ballots. On the envelopes shall be printed "Enclosed is the ballot of an absentee voter" and, at the top thereof, [4] 5 blank spaces with the words "Name, Voting Address, Ward, Town or City, **Signature**" appropriately printed thereon.

Amend the bill by replacing all after section 4 with the following:

5 Elections; Absentee Voting; Procedure for Absence, Religious Observance, and Disability and Overseas Voting; Procedure by Voter; Affidavit Removed. Amend RSA 657:17 to read as follows:

657:17 Procedure by Voter. After marking the ballot, the voter or the person assisting a blind voter shall enclose and seal the same in the [affidavit] envelope. ~~[The voter shall execute the affidavit on it.]~~ The voter or the person assisting the blind voter shall enclose and seal said envelope in the return envelope. The voter shall then sign the envelope and endorse thereon his **or her** name, address, and voting place and shall mail the envelope, affixing postage, or personally deliver it to the city or town clerk from whom it was sent.

6 Elections; Absentee Voting; Procedure for Absence, Religious Observance, and Disability and Overseas Voting; Procedure by Clerk; Examination for Signature. Amend RSA 657:18 to read as follows:

657:18 Procedure by Clerk. Upon receipt of a return envelope purporting to contain an official absentee voting ballot, the clerk of the city or town shall *examine the return envelope and may notify the voter if the return envelope is not signed. The clerk shall* attach [thereto] the application for an absentee ballot submitted by said voter *to the return envelope*. All such envelopes shall be preserved unopened until election day.

7 Elections; Absentee Voting; Procedure for Armed Services and Federal Overseas Citizen Voting; Procedure by Voter; Affidavit Removed. Amend RSA 657:20 to read as follows:

657:20 Procedure by Voter. After marking [his] *the* ballot, an armed services voter or a federal overseas citizen voter shall seal the same in the [affidavit] envelope. ~~[If he is a registered voter, he shall execute the appropriate affidavit and return the ballot as hereinafter provided. If the voter is not registered in the town in which he desires to vote, he shall execute the appropriate affidavit.]~~ If the armed services voter or federal overseas citizen voter, because of blindness or other physical disability, is unable to mark [his] *the* ballot, an official empowered to administer oaths may assist [him] *the voter* to mark [his] *the* ballot as directed by the voter. The official shall then certify on the outside thereof that it was marked with [his] *the official's* assistance and shall thereafter give no information regarding the same. ~~[Having executed the affidavit,]~~ The voter shall enclose and seal said envelope in the return envelope. ~~[He]~~ *The voter* shall then *sign the envelope and* endorse thereon his *or her* name, address, and voting place and shall mail the envelope or personally deliver it to the city or town clerk from whom it was sent.

8 Elections; Absentee Voting; Procedure for Armed Services and Federal Overseas Voting; Registration of Voters; Affidavit Removed. Amend RSA 657:21 to read as follows:

657:21 ~~[Registration of Voters]~~ *Receipt of Envelope*. Upon receipt of a return envelope containing an armed services or overseas citizen federal election absentee ballot, the clerk of the city or town shall ~~[open and retain said envelope and deliver the affidavit envelope to the supervisors of the checklist of the voting place indicated thereon. If the voter is not registered, the appropriate affidavit appearing on said envelope, if properly executed, shall be prima facie evidence of the voter's qualifications to become a voter and his name shall be added to the checklist. The supervisors of the checklist shall then return the affidavit envelopes unopened to the city or town clerk who shall see that they agree in number with the mailing envelopes. Said clerk shall attach the application for an armed services or overseas citizen federal election absentee ballot submitted by said voter to the 2 corresponding envelopes and]~~ *examine the return envelope and may notify the voter if the return envelope is not signed. The clerk shall* retain [them] *the return envelopes* until election day.

9 Elections; Election Procedure; Processing Absentee Ballots; Affidavit and Signature Examinations Removed. Amend RSA 659:50-54 to read as follows:

659:50 Announcement by Moderator. The moderator shall begin processing absentee ballots by clearly announcing that he *or she* is about to open the envelopes which were delivered to him *or her*. The moderator shall then remove the [affidavit] envelope containing the ballots of each absentee voter ~~[and shall compare the signature on the affidavit envelope with the signature on the application for the ballot]. If[~~



I.] the name of the voter is on the checklist[;] and

[H. The affidavit on the envelope appears to be properly executed; and

III. ~~The signature on the affidavit appears to be executed by the same person who signed the application; and~~

IV. ~~The signatures appear~~ *the signature appears* to be the [signatures] *signature* of a duly qualified voter who has not voted at the election; then the moderator shall publicly announce the name of the absentee voter. If these conditions are not met, the moderator shall follow the procedure provided in RSA 659:53.

659:51 Challenges. All absentee ballots are subject to challenge after the moderator publicly announces the name of the absentee voter but not after the ballot is removed from the envelope. A person who makes a challenge shall state the reason for the challenge. If the ballot is challenged, the moderator shall write on the [affidavit] envelope containing the ballot the word "challenged" and the name and address of the person who makes the challenge and the basis of the challenge. The moderator shall also number each challenged envelope consecutively by marking, for example, the first challenged ballot "Challenged Ballot No. 1". The moderator shall then determine if the challenge to the ballot is well grounded. If the moderator decides the challenge is well grounded, [he] *the moderator* shall not open the envelope but shall preserve it with the other ballots cast at the election as provided in RSA 659:101. If the moderator decides that the challenge is not well grounded, [he] *the moderator* shall open the [affidavit] envelope ~~so the affidavit thereon is not destroyed~~ and proceed first to mark on the reverse of the folded ballot the corresponding challenge number as previously marked on the envelope. [He] *The moderator* shall then proceed to deposit the ballot as provided in RSA 659:52.

659:52 Opening Envelope; Depositing Ballot. If the absentee ballot is not challenged, the moderator shall, after announcing the name of the voter, open the [affidavit] envelope containing the ballot ~~so the affidavit on the envelope is not destroyed~~. [He] *The moderator* shall then take the ballot out of the envelope without unfolding the ballot or without permitting the ballot to be examined, and [he] shall preserve the [affidavit] envelope with the ballots cast at the election as provided in RSA 659:101. The moderator shall then have a checkmark placed beside the name of the absentee voter on the checklist and write therewith the letters "A.V." in red ink and shall then deposit the ballot in the ballot box.

659:53 Forms Not in Order. If the moderator finds that the absentee voter is not entitled to vote, [he] *the moderator* shall not open the envelope and shall mark across the face of the envelope the reason the ballot is rejected, such as "rejected as not a voter", "voted in person", ~~["affidavit improperly executed";]~~ "not signed by proper person", or whatever the reason is. The moderator shall save all the unopened envelopes and shall preserve the envelopes with the ballots cast at the election as provided in RSA 659:101.

659:54 Immaterial Defects. No absentee ballot shall be rejected by the moderator for any immaterial addition, omission, or irregularity in the preparation or execution of any writing ~~[or affidavit]~~ required herein.

10 Elections; Election Procedure; Preservation of Ballots and other Election Materials; Preservation of Absentee Voting Materials; Affidavit Removed. Amend RSA 659:101 to read as follows:

659:101 Preservation of Absentee Voting Materials. The [affidavit] envelopes and application forms processed by the moderator as provided in RSA 659:50 shall be preserved in the same manner as provided in RSA 659:95-100 for the preservation of official state election ballots.

11 Elections; Town Elections; By Official Ballot; Forms; Affidavit. Amend RSA 669:27, III-IV to read as follows:

III. ~~[Envelopes of sufficient size to contain the ballots specified in paragraph I, on which shall be printed]~~ The following affidavit *to be included with the application*:

Absence. A person voting by absentee ballot because of absence from the place in which ~~he~~ *or she* is entitled to vote shall fill out and sign the following certificate:

I do hereby certify, under the penalties of perjury, that I am a duly qualified voter in the town (city, village district, school district) of ....., New Hampshire, *and* that I will be absent on election day from said town (city, village district, school district) and will be unable to vote in person~~[-that I have carefully read the instructions forwarded to me with the ballot herein enclosed and that I personally marked the within ballot and enclosed and sealed it in this envelope].~~  
(Signature).....

Absence Because of Religious Observance or Physical Disability. A person voting by absentee ballot because of religious observance or physical disability shall fill out and sign the following certificate:

I do hereby certify, under the penalties of perjury, that I am a duly qualified voter in the town (city, village district, school district) of ....., New Hampshire, *and* that I will be observing a religious commitment which prevents me from voting in person, or that on account of physical disability I am unable to vote in person~~[-that I have carefully read the instructions forwarded to me with the ballot herein enclosed, and that I personally marked the within ballot and sealed it in this envelope].~~  
(Signature) .....

IV. Return envelopes of size sufficient to contain the ~~[affidavit envelopes]~~ *ballot*, addressed to the clerk upon which shall be printed, "Enclosed is the ballot of an absentee voter", and at the top thereof blank spaces for the name, address, and voting place of the sender, with the words "name," and "address" appropriately printed thereon.

12 Effective Date. This act shall take effect 60 days after its passage.

SENATOR TROMBLY: Each election year we hear horror stories about our election laws. In particularly of a concern is what we do with people who cannot go to the polls on Election Day. The current state of the law on absentee ballots is that you fill out an application that goes to the clerk and the clerk sends you back an envelope that contains an affidavit on it, a secret envelope and the ballot. On Election Day if you have not signed in the appropriate places, then your vote is not counted. The committee felt that we should go to a different avenue, a different way of having absentee ballots cast. In a way that will ensure that the vote will be counted, so under this bill the new process would be this: There would be on the application itself for the absentee ballot, the affidavit stating that the person is not able to vote because of illness or because they are going to be out of town. That would then go to the clerk. The clerk could then verify at the time that she or he receives that whether or not the affidavit was completed properly, giving the clerk the ability to contact the voter and have the form completed properly. The clerk will then send a ballot, a blank envelope and a return envelope to the voter to guarantee that the voter cast the ballot, at least the one who fills out the affidavit is the person who cast the vote, that the returned envelope to the clerk will contain a signature line. So the voter will vote, put the ballot in a blank envelope so that the moderator or any election official

will not know how the voter voted. The voter will then put that envelope in another envelope and sign the outside envelope. The clerk then will be able to compare the application with the affidavit and the envelope at the time that it is received by the clerk, while guaranteeing the privacy of the voter. That will mean that the clerks will have the ability to make sure that the absentee ballot is not discounted on Election Day because of a technicality of not signing in the appropriate places. Thank you.

SENATOR KRUEGER: I rise in opposition. I spoke to the secretary of state this morning. I would like to refer the Senators to page eight of the amendment, midway down the page where it is crossed out. "That I have carefully read the instructions forwarded to me with the ballot herein enclosed and that I personally marked the within ballot enclosed and sealed it in this envelope." The secretary of state is quite concerned that basically when that ballot goes into the envelope and is signed on the outside of the envelope, there is nothing to ensure...let's take a nursing home with 100 votes or 200 votes, that that ballot inside of that envelope is also signed and attested to by this person. So the secretary of state has grave concerns, as do I. For your information, I would like to inform the Senators here that because of a similar bill that passed in the state of Florida, they have had so many serious problems with fraud that I am sorry that I don't have the information for you here, but I am sure that it could be provided to anyone as to why the state of Florida is in such chaos, primarily due to this exact bill. Going back again, and agreeing with Senator Trombly that the ballot goes inside envelopes, but the only place where that Mrs. Jones signs to say that she actually did vote in that manner would not be on that ballot, but on the outside of an envelope. I would urge you to overturn the committee report. Thank you.

Senator Russman moved to have **SB 94**, relative to absentee voter affidavits, laid on the table.

**Adopted.**

### **LAI ON THE TABLE**

**SB 94**, relative to absentee voter affidavits.

**SB 188-L**, allowing school districts to have a special vote on a bond issue in the same calendar year in which they voted on the bond issue. Public Affairs Committee. Vote 6-0. Ought to pass with amendment, Senator Wheeler for the committee.

**1999-0958s**

**08/09**

### **Amendment to SB 188-LOCAL**

Amend the title of the bill by replacing it with the following:

**AN ACT** allowing school districts operating under the official ballot form of meeting to have more than one special meeting per year through court petition on an appropriation question or issue.

Amend the bill by replacing all after the enacting clause with the following:

1 Official Ballot Meetings; Special School District Meetings to Raise and Appropriate Money. Amend RSA 40:13, XV and XVI to read as follows:

XV. Votes taken at the second session shall not be reconsidered; *except that a school district may reconsider by special warrant article at a subsequent special meeting votes regarding raising and appropriating money.*



XVI. The warrant for any special meeting shall prescribe the date, place and hour for both a first and second session. The second session shall be warned for a date not fewer than 28 days nor more than 60 days following the first session. The first and second sessions shall conform to the provisions of this subdivision pertaining to the first and second sessions of annual meetings. Special meetings shall be subject to RSA 31:5, 39:3, 195:13, 197:2, and 197:3, provided that no more than one special meeting may be held to raise and appropriate money for the same question or issue in any one calendar year or fiscal year, whichever applies, *except that a school district may hold any additional special district meeting to raise and appropriate money for the same question or issue pursuant to RSA 197:3 if an emergency arises*, and further provided that any special meeting held pursuant to paragraphs X and XI shall not be subject to RSA 31:5 and RSA 197:3 and shall not be counted toward the number of special meetings which may be held in a given calendar or fiscal year.

2 Application to Annual School Meetings Held in 1999. Notwithstanding any other provision of law, this act shall apply to any annual school meetings held in 1999.

3 Effective Date. This act shall take effect upon its passage.

1999-0958s

#### AMENDED ANALYSIS

This bill allows school districts operating under the official ballot form of meeting to have more than one special meeting per year through court petition on an appropriation question or issue. This act shall apply to any annual school meetings held in 1999.

SENATOR WHEELER: Senate Bill 188 allows school districts operating under the official ballot form of meeting to have more than one special meeting per year through court petition on an appropriation question or issue. Testimony received at the public hearing stated that due to the Claremont lawsuit issues, many districts have been reluctant to pass bond issues. The amendment would allow districts, which have already held their meetings for 1999 to reconsider their votes. The amendment also changes the effective date to upon passage. The Senate Public Affairs Committee recommends that SB 188 ought to pass as amended.

SENATOR FRANCOEUR: Senator Wheeler, since you mentioned that this was related to the Claremont issues, has this got a sunset, is it only good for this year?

SENATOR WHEELER: No, it does not have a sunset.

SENATOR FRANCOEUR: So this would go on forever so that they could keep having meetings?

SENATOR WHEELER: They would have to follow the procedure as outlined in the amendment on page nine. They can't just keep on having meetings, they have to have the court allow them to have it and to go through an appropriate process.

SENATOR FRANCOEUR: Currently, can't they already go to the court for an emergency process that is in the current statute today?

SENATOR WHEELER: That is not my understanding that they can right now.

SENATOR F. KING: I have a community in my district that I think would need to have this bill passed in order to conduct another vote on a school bonding issue. They failed to pass the issue two years ago, by I think, three votes, and it came to a vote this year and there was an indication that because of the Claremont fiasco, that the citizens were unable to take an affirmative vote. I think that if this were passed, it would give them a chance to reconsider that issue. The town bought the land for the school and there is a lot of public support for it. As you know, it is hard to get a two-thirds vote on an issue and so because of that, I would support this issue.

SENATOR FERNALD: Senator Wheeler, I just want to make sure that I understand the procedure here. We have a school district meeting with a bond vote. The bond is turned down and then I wasn't clear on whether the school board, then at a subsequent meeting, can declare a special meeting or whether something has to be on the original school district meeting ballot authorizing a further meeting?

SENATOR WHEELER: No, Senator Fernald, the problem is that right now, it would have had to have been on the original warrant that they wanted to reconsider. That is the way that the bill was drafted incorrectly to begin with. That wouldn't do them any good. So this would be a special warrant article at a subsequent special meeting.

SENATOR FERNALD: And the meeting would be called by the school board?

SENATOR WHEELER: Whatever the process is normally for calling the meeting.

**Amendment adopted.**

**Ordered to third reading.**

**HB 78**, relative to the counting of votes when the moderator is disqualified. Public Affairs Committee. Vote 5-0. Ought to Pass, Senator Trombly for the committee.

SENATOR TROMBLY: This bill simply clarifies that when the moderator is disqualified from performing his or her election duties because they are a candidate for elective office other than as their elected official, that the counting of the ballots be overseen by the moderator pro-temporary. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 268-L**, relative to the adoption and rescission of the official ballot form of meeting. Public Affairs Committee. Vote 6-0. Ought to Pass, Senator Wheeler for the committee.

SENATOR WHEELER: House Bill 268 clarifies the wording of the question which proposes the rescission of the official ballot form of meeting. It also clarifies that the official ballot form of meeting is that which is commonly known as SB 2. Testimony received at the public hearing stated that this is the same legislation, which passed both houses last year but was killed in a Committee of Conference. This year, the legislation was unanimously adopted by the House committee and passed by the full House on the Consent Calendar. This legislation would change the question from "shall we adopt" the provisions of RSA 40:13 (known as SB 2). It is felt that the wording "shall we rescind" more clearly indicates what occurs when the voter answers the question in the affirma-

tive. By putting in the law on the ballot or wherever we are putting this, as "(known as SB 2)", that clarifies what RSA 40:13 is because most people think of it as SB 2. The Senate Public Affairs Committee recommends that HB 268 ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 206**, relative to restrooms in restaurants. Public Institutions, Health and Human Services Committee. Vote 5-0. Ought to pass with amendment, Senator Wheeler for the committee.

**1999-1010s**

**03/09**

### **Amendment to HB 206**

Amend RSA 155:40, I as inserted by section 1 of the bill by replacing it with the following:

***I. All places where the business of serving food to the public is conducted shall be equipped with toilet and lavatory facilities convenient of access for the use of patrons. Separate toilet rooms for each sex shall be provided for patrons of any restaurant designed to seat 25 or more patrons at one time or for patrons of any food establishment where alcoholic beverages are served. The commissioner of the department of health and human services shall have the authority to waive the requirements of this section for such businesses having 5 or fewer seats, for good cause shown, provided the business is unable to comply with this section because it does not have toilet or lavatory facilities on the effective date of this section as amended, and can show that the requirements of this section would cause substantial hardship.***

SENATOR WHEELER: Actually, although I am rising in support of HB 206, I want to go on record as saying that generally I always favor having a lot of restrooms especially in restaurants. This bill though is a matter of practicality and convenience. The sponsors of this bill initially offered an amendment to us which would require the Department of Health and Human Services to waive the requirement for toilet and lavatory facilities for businesses with five or fewer seats, provided that the business is unable to comply with this regulation because it already didn't have a toilet or a lavatory facility. The Department of Health and Human Services disagreed with this language requiring that the regulations for toilet facilities be waived. Instead, we amended it in the committee to say that DHHS would have the authority to waive, thus allowing the department to decide, at their own discretion, which restaurants the toilet facility requirements will be waived. In the end, DHHS and the sponsors of HB 206 agreed to adopt the amendment of the sponsors, with the change in the wording requested by DHHS. The agreed upon amendment is printed in the Senate Calendar. I urge you to encourage this act of cooperation between the sponsors and the Department of Health and Human Services and pass HB 206 as amended.

SENATOR TROMBLY: Senator Wheeler, I was sitting here and I became very concerned, if we are talking about restaurants and people serving food in restaurants and five stools, and them not having a lavatory, what do a) the employees do when they need to use something that is not there and b) what do they do to wash their hands?



SENATOR WHEELER: These are very good questions, Senator Trombly, that we debated at length and in great detail in the committee. We had pictures that Representative Dickinson brought us of a little restaurant in North Conway that indeed has plenty of hand washing opportunities, but it does not have the toilet facilities **TAPE CHANGE** the few that are on stools have made other arrangements.

SENATOR TROMBLY: What about the employees who make those sandwiches?

SENATOR WHEELER: They wash their hands.

SENATOR TROMBLY: Where do they go to go?

SENATOR WHEELER: They have some cooperative arrangement with another establishment.

SENATOR TROMBLY: Oh okay.

SENATOR JOHNSON: I would like to respond to Senator Trombly's question. Conway is in my district and would you believe that when I go to Conway, I don't go for bagels?

SENATOR TROMBLY: If I may, Mr. President, I drive from Boscowen to Conway, and the first thing that I do when I get to Conway is to look for somewhere to go and that is not for bagels either.

**Amendment adopted.**

**Ordered to third reading.**

**HB 214**, changing the membership of and extending the reporting date for the committee to study women's health care. Public Institutions, Health and Human Services Committee. Vote 5-0. Ought to Pass, Senator Squires for the committee.

SENATOR SQUIRES: For those that are absent to eating, I want to say that they are going to miss something in this discussion of this bill in the issue of women's health care. In any event, this bill changes the membership of and the reporting date of the present committee to study women's health care. We are trying to bring New Hampshire in line with other states to support and report various indices about women's health care. It is obvious, given the pressures of time that have come upon this session, that the committee cannot complete its work as originally proposed, so we are asking if the date would be extended and the composition changed to comply with that a slight degree. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 515**, extending the indemnification of persons providing clinical services to the department of health and human services. Public Institutions, Health and Human Services Committee. Vote 4-0. Ought to Pass, Senator Fernald for the committee.

SENATOR FERNALD: Under New Hampshire law if an employee of the state carrying out their duties is sued, they are indemnified by the state. We also have some nonprofits that do work for the state under contract, particularly at the state hospital. The testimony was mostly from Dartmouth Hitchcock Medical Center. This bill is an extension of current law, which allows the nonprofit employees who do work for the state to also enjoy this indemnification. If we do not do this, then those nonprofits that bid for the state work will have to increase their price considerably because they will have to buy liability and malpractice in-

surance. The testimony was that it would cost the state \$800,000 a year in increased costs for these nonprofits that bid for state work. This bill allows us to save money and it is an extension of current law. The committee asks you to support it.

SENATOR F. KING: Assuming that there is a cause for some of this damage, where do they get recourse for this?

SENATOR FERNALD: The state indemnifies.

SENATOR F. KING: The state will indemnify, so it is through the state?

SENATOR FERNALD: Well they sue the person and then the state steps in to defend the person and provide recovery.

**Adopted.**

**Ordered to third reading.**

**SB 69-L**, relative to health care charitable trusts and community benefits. Public Institutions, Health and Human Services Committee. Vote 5-0. Ought to pass with amendment, Senator Wheeler for the committee.

**1999-1008s**

**08/09**

### **Amendment to SB 69-LOCAL**

Amend the bill by replacing all after the enacting clause with the following:

1 New Subdivision; Community Benefits. Amend RSA 7 by inserting after section 32-b the following new subdivision:

#### **Community Benefits**

7:32-c Purpose. The purpose of this subdivision is to ensure that health care charitable trusts provide the communities they serve with benefits in keeping with the charitable purposes for which the trusts were established and in recognition of the advantages the trusts enjoy. It acknowledges that each community is unique and its particular health care problems and needs should be examined and the community benefits provided by health care charitable trusts which serve it should be directed toward addressing the issues and concerns of that community. Community involvement in the development of community benefits plans is necessary to make the health care charitable trusts more responsive to the true needs of the community. State oversight of the planning process and public access to the community benefits plans will assure appropriate use of the resources of health care charitable trusts.

7:32-d Definitions. In this subdivision:

I. "Charity care" means health care services provided by a health care charitable trust for which the trust does not expect and has not expected payment and which health care services are not recognized as either a receivable or as revenue in the trust's financial statements.

II. "Community" means the service area or patient population for which a health care charitable trust provides services.

III. "Community benefits" means a health care charitable trust's activities that are intended to address community health care needs including, but not limited to, any of the following:

(a) Charity care.

(b) Financial or in-kind support of public health programs even if the programs extend beyond the trust's service area, including support of recommendations in any state health plan developed by the department of health and human services.

(c) Allocation of funds, property, services or other resources that contribute to community health care needs identified in a community benefits plan.

(d) Donation of funds, property, services, or other resources which promote or support a healthier community, enhanced access to health care or related services, health education and prevention activities, or services to a vulnerable population.

(e) Support of medical research and education and training of health care practitioners.

IV. "Community benefits plan" means a written document prepared by a health care charitable trust which identifies health care needs in the area served by the trust and describes the activities the trust has undertaken and will undertake to address the identified needs.

V. "Health care charitable trust" means a charitable trust organized to provide health care services, including, but not limited to, hospitals, nursing homes, community health services, and medical-surgical or other diagnostic or therapeutic facilities or services. "Health care charitable trust" shall not include any testamentary or inter vivos trust which is not organized to provide health care services.

VI. "Vulnerable population" means any population that is at risk of not receiving health services due to medical, financial or other barriers.

7:32-e Community Benefits Plans. Within 90 days of the start of its fiscal year every health care charitable trust shall develop a community benefits plan. The plan shall be developed in accordance with the following criteria:

I. The trust shall adopt a mission statement which shall be included in its plan and which shall be reaffirmed by the trust on an annual basis.

II. The plan shall take into consideration a community needs assessment conducted in accordance with RSA 7:32-f and shall identify the health care needs that were considered in development of the plan.

III. The plan shall identify the activities the trust expects to undertake or support which address the needs determined through the community needs assessment process or which otherwise qualify as community benefits and shall include all charity care in a discrete category.

IV. The plan shall include a report on the community benefit activities undertaken by the trust in the preceding year and information describing the results or outcomes of the trust's community benefit activities. The report shall also include the means used to solicit the views of the community served by the trust; identification of community groups, members of the public, and local government officials consulted on the development of the plan; and an evaluation of the plan's effectiveness.

V.(a) To the extent practicable, the plan shall include:

(1) An estimate of the cost of each activity expected to be undertaken or supported in the ensuing year; and

(2) A report on the unreimbursed cost of each activity undertaken in the preceding year.

(b) For reporting purposes, the cost of contributed services shall be determined in accordance with the rates, costs, units of service or other statistical measures used for general accounting purposes by the health care charitable trust. In addition, each charitable trust shall include in its report the ratio of its gross receipts from operations to its net operating costs, as shown in its final statement of accounts for the preceding fiscal year.

VI. The process for development of the plan shall include an opportunity for members of the public in the trust's service area to provide input into development of the plan and comment upon the trust's proposed plan.



7:32-f Community Needs Assessment. Every health care charitable trust shall, either alone or in conjunction with other health care charitable trusts in its community, conduct a community needs assessment to assist in determining the activities to be included in its community benefits plan. The needs assessment process shall include consultation with members of the public, community organizations, service providers, and local government officials in the trust's service area, in the identification and prioritization of community needs that the health care charitable trust can address directly, or in collaboration with others. The community needs assessment shall be updated at least every 3 years.

7:32-g Notice to Director of Charitable Trusts and Public; Administrative Fine.

I. Every health care charitable trust shall submit its community benefits plan to the director of charitable trusts on an annual basis no later than 90 days after the start of the trust's fiscal year. The trust and the director of charitable trusts shall make all community benefits plans available to the public and, where practicable, shall place the reports on an internet site or web page. Every health care charitable trust shall at least annually provide notice to the public of the availability and process for obtaining a copy of its community benefits plan and shall prominently display such notice in its lobby, waiting rooms, or other area of public access.

II. An extension of time for filing the community benefits plan may be granted by the director.

III. The director may impose an administrative fine upon a charitable organization that violates any provision of RSA 7:32-g, I, in an amount not to exceed \$1,000 plus attorneys fees and costs for each such violation.

7:32-h Charity Care. The provision of charity care may be included in a community benefits plan by a health care charitable trust only to the extent that it:

I. Does not include any sums identified as bad debt, a receivable or revenue by the trust in accordance with generally accepted accounting principles.

II. Is provided in accordance with a written policy which is available to the public, which allows any individual to make application and receive a prompt decision on eligibility for and the amount of charity care, and notice of which is prominently displayed in the trust's lobby, waiting rooms, or other area of public access or otherwise is provided to service applicants and recipients who are served in their own homes or in locations other than a facility of the trust.

7:32-i Enforcement. Nothing in this subdivision shall derogate from authority of the attorney general, or the rights of others, provided by common law or other statute.

7:32-j Exemption. If the total equalized assessed value of the real estate assets of a health care charitable trust do not exceed \$1,000,000, the trust shall have no obligation to comply with the provisions of this subdivision.

2 Legislative Review. The provisions of this act shall be subject to further legislative review and amendment based on the results of the statewide health plan process to be implemented during the fiscal year ending June 30, 2000 and the initial reports by the health care charitable trusts in compliance with this act.

3 Effective Date. This act shall take effect January 1, 2000.

1999-1008s

## AMENDED ANALYSIS

This bill requires that health care charitable trusts develop community benefits plans each fiscal year which shall be submitted to the director of charitable trusts; and provides what shall be included in such plans. Health care charitable trusts shall also conduct community needs assessments in order to help determine the activities to be included in the community benefits plans. Health care charitable trusts with total equalized assessed value of real estate assets not exceeding \$1,000,000 are exempt from this bill's provisions. The bill also authorizes the director of charitable trusts to assess an administrative fine upon charitable trusts for failure to comply with certain requirements.

SENATOR WHEELER: I rise to make a report on SB 69. This bill has its own particular gremlin apparently. The committee keeps working on it and the committee keeps actually voting in favor of it, but because of a typographical error the amendment is still not printed correctly in the Senate Calendar. So I am going to defer to Senator Squires for a motion.

Senator Squires moved to have **SB 69-L**, relative to healthcare charitable trusts and community benefits, laid on the table.

**Adopted.**

## LAID ON THE TABLE

**SB 69-L**, relative to health care charitable trusts and community benefits.

**SB 120-FN**, relative to the health services planning and review board. Public Institutions, Health and Human Services Committee. Vote 6-0. Inexpedient to Legislate, Senator Squires for the committee.

SENATOR SQUIRES: Senate Bill 120 initially tried to address one of the great legislative quagmires of this session. This problem of ambulatory service centers will be addressed via another bill making this one inexpedient to legislate.

**Committee report of inexpedient to legislate is adopted.**

**SB 149-FN**, regulating the practice of hypnotherapy. Public Institutions, Health and Human Services Committee. Vote 5-1. Inexpedient to Legislate, Senator McCarley for the committee.

SENATOR MCCARLEY: I rise in support of the committee report of inexpedient to legislate on SB 149. Those in favor of this bill testified that hypnotherapy can be effective when done correctly by professionals with sufficient education and training. However, the committee is uncomfortable with the term "hypnotherapy" and feels that it is necessary to protect consumers and prevent individuals from harming or duping the general public under the guise of "therapy." In our view, by allowing licensure, we would be misrepresenting hypnotherapy as a type of regulated treatment, which it is not. Although hypnosis may be an effective means of treatment for certain individuals, the committee does not feel that it is appropriate to establish a board for hypnotherapy licensing. I ask for your support for the motion of inexpedient to legislate.

**Committee report of inexpedient to legislate is adopted.**

**SB 183-FN-A**, implementing recommendations developed through a statewide health care planning process and continually appropriating a spe-

cial fund. Public Institutions, Health and Human Services Committee. Vote 4-0. Ought to pass with amendment, Senator Squires for the committee.

**1999-1009s**

**01/09**

### **Amendment to SB 183-FN-A**

Amend the title of the bill by replacing it with the following:

**AN ACT** establishing a New Hampshire health access corporation and continually appropriating a special fund and making an appropriation therefor, requiring the department of health and human services to make a biennial report on the health status of New Hampshire residents, relative to certain transfers to the health care fund, and relative to rates for pharmaceutical services.

Amend the bill by replacing all after the enacting clause with the following:

#### **1 Statement of Purpose.**

I. The purpose of sections 1-5 of this bill is to implement recommendations developed through a statewide health care planning process that involved over 1,000 New Hampshire citizens, health and social service professionals and elected officials. The process was undertaken to assist the department of health and human services in meeting its responsibilities under RSA 126-A:4, I "to provide a comprehensive and coordinated system of health and human services as needed to promote and protect the health, safety, and well-being of the citizens of New Hampshire."

II. The 1998 preliminary report entitled New Hampshire Health Care System: Guidelines for Change sets forth goals to guide long-term efforts to improve the health status of New Hampshire citizens. This bill is the initial legislative effort toward implementation of the recommendations and objectives of the Guidelines for Change.

2 New Chapter; New Hampshire Health Access Corporation. Amend RSA by inserting after chapter 126-L the following new chapter:

### **CHAPTER 126-M**

#### **NEW HAMPSHIRE HEALTH ACCESS CORPORATION**

126-M:1 Purpose. Many New Hampshire citizens lack adequate access to health care services and experience diminished health outcomes because they cannot obtain affordable health insurance coverage. The purpose of this chapter is to address this problem by promoting the availability of affordable health insurance for persons who would otherwise be without coverage. Under this market-oriented approach, the New Hampshire health access corporation contracts with health insurers to provide the needed coverage. Eligibility is designed to include persons who can demonstrate that they are uninsured because they are without access to affordable coverage and to exclude persons who have access to other health insurance coverage that is within their means.

126-M:2 Definitions. In this chapter:

I. "Board" means the health access board established in RSA 126-M:4.

II. "Corporation" means the New Hampshire health access corporation established in this chapter.

III. "Health insurer" means any entity licensed to provide health insurance pursuant to title 37 or any other provider of health care services approved by the commissioner of the insurance department.



126-M:3 Corporation Established. There is hereby created a body politic and corporate having a distinct legal existence separate from the state and not constituting a department of state government, to be known as the New Hampshire health access corporation to carry out the provisions of this chapter. The corporation is hereby deemed to be a public instrumentality and the exercise by the authority of the powers conferred by this chapter shall be deemed and held to be the performance of public and essential governmental functions of the state. The corporation shall be a private nonprofit corporation and shall have all the powers necessary to carry out the purposes of this chapter, including, but not limited to, the power to receive and accept grants, loans, or advances of funds from any public or private agency and to receive and accept from any source, contributions of money, property, labor, or any other thing of value, to be held, used, and applied for the purposes of this chapter.

126-M:4 Health Access Board.

I. The powers of the corporation shall be vested in 16 members who shall hold 3-year terms of office as follows:

(a) A public member, appointed by the governor.

(b) A member of the house of representatives, appointed by the speaker of the house.

(c) A member of the senate, appointed by the president of the senate.

(d) The commissioner of the insurance department, or designee.

(e) The commissioner of the department of health and human services, or designee.

(f) Two representatives of the business community, appointed by the governor.

(g) One member appointed by the New Hampshire Hospital Association.

(h) One member appointed by the New Hampshire Academy of Family Practice.

(i) One member appointed by the New Hampshire Nurses Association.

(j) One member appointed by the Business and Industry Association of New Hampshire.

(k) One member appointed by the New Hampshire Medical Society.

(l) Four members-at-large, appointed by the health access board of directors.

II. The initial terms of office shall be as follows: the members in subparagraphs I(a) and (g) and one member in subparagraph I(f) shall serve for one year; one member in subparagraph I(f) and the members in subparagraphs I(h) and (k) shall serve for 2 years; and the members in subparagraphs I(i), and (j) shall serve for 3 years. The other members in subparagraphs I(b), (c), (d) and (e) shall serve terms which are coterminous with their terms in office. Two of the 4 members in subparagraph I(l) shall serve for one year, one shall serve for 2 years, and one shall serve for 3 years.

III. The members shall elect annually from among their number a chairperson and such officers as they may determine. A member shall hold office until a successor has been appointed and qualified. Members shall receive no salary for the performance of their duties under this chapter, but each member shall be reimbursed for reasonable expenses incurred in carrying out duties under this chapter. Any such expenses by board members shall have prior approval by 7 members of the board of directors before reimbursement. A member of the board of directors may be removed for cause by the official who appointed that member.

IV. There shall be no liability on the part of, and no cause of action shall arise against, any member of the board of directors, or its employees or agents, for any action they take in the performance of their powers and duties under this chapter.

V. The corporation shall not be deemed an insurer. The officers, directors, and employees of the corporation shall not be deemed to be the agents of an insurer. Neither the corporation nor any officer, director, or employee of the corporation shall be subject to the licensing requirements of the insurance code or the rules of the department of insurance. However, the department of insurance may require that any marketing representative utilized and compensated by the corporation be appointed as a representative of the health insurers with which the corporation contracts.

VI. Except as provided in RSA 126-M:6, I, the board shall have complete fiscal control over the corporation and shall be responsible for all corporate operations.

126-M:5 Meetings of Board. Meetings shall be held at the call of the chairperson or when 5 members so request. Nine members of the board shall constitute a quorum and the affirmative vote of 9 members shall be necessary for any action taken by the corporation. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the corporation.

126-M:6 Powers and Duties.

I. The corporation shall develop eligibility criteria and provider selection criteria which shall be approved by the legislative fiscal committee prior to their implementation by the corporation. Any subsequent modification of these criteria shall be approved by the legislative fiscal committee prior to their implementation. In this paragraph, "eligibility criteria" means those criteria which adults must meet in order to participate in the program and "provider selection criteria" means those criteria that health insurers must meet in order to offer benefits under the program.

II. Following receipt of the approval required in paragraph I, the corporation shall take all actions necessary to implement the program, including but not limited to:

(a) Arranging for the collection of any premium, in an amount to be determined by the board of directors, from all participants to provide for payment for preventive health care services or premiums for comprehensive health insurance coverage and for the actual or estimated administrative expenses incurred during the period for which payments are made.

(b) Consulting appropriate professional organizations and establishing standards for preventive health care services and providers and comprehensive insurance benefits appropriate to adults.

(c) Establishing participation criteria and, if appropriate, contracting with a health insurer or licensed insurance administrator to provide administrative services to the corporation.

(d) Contracting with health insurers, in accordance with standards established by the corporation, to provide comprehensive insurance coverage and preventive health care services to participants.

(e) Developing and implementing a plan to publicize the New Hampshire health access corporation, the eligibility requirements of the program, and the procedures for enrollment in the program and to maintain public awareness of the corporation and the program.

(f) Securing staff necessary to properly administer the corporation. Staff costs shall be funded from such private or public funds as become available. The board of directors shall determine the number of staff members necessary to administer the corporation.

III. Coverage under the corporation's program shall be secondary to any other available private coverage held by the participant. The corporation may establish procedures for coordinating benefits under this program with benefits under other public and private coverage.

126-M:7 Adoption of Policy. The corporation may adopt policies, pursuant to its own procedures, relative to:

I. The conduct of its business, including the administrative and accounting procedures for operation of the corporation.

II. The procedures under which applicants to and participants in the program may have grievances reviewed by an impartial body and reported to the board of directors of the corporation.

III. Application procedures.

IV. Schedules of fees and other charges to be made by the corporation and the health insurers in renewing, acting upon, or accepting applications under this chapter and any other matters related to such applications as the corporation may deem necessary.

V. Confidentiality of medical records obtained under this chapter.

VI. Such other matters as are necessary to carry out the powers and duties of the corporation.

126-M:8 New Hampshire Health Access Fund. There is hereby established in the office of the state treasurer a fund to be known as the New Hampshire health access fund. The New Hampshire health access corporation established in RSA 126-M:3 is authorized to accept public sector and private sector grants, gifts, donations, and appropriations of any kind to further the goals of the corporation. Public sector appropriations shall be deposited in the New Hampshire health access fund and may be expended by the New Hampshire health access corporation to accomplish the purposes of RSA 126-M. The moneys in the fund shall be nonlapsing and shall be continually appropriated to the corporation. Other revenues of the corporation such as grants, gifts, donations, and participant premium payments shall not be considered revenue of the state, but rather shall be funds of the corporation to be deposited as determined by the New Hampshire health access board of directors.

3 New Subparagraph; Special Fund. Amend RSA 6:12, I by inserting after subparagraph (vvv) the following new subparagraph:

(www) Moneys received under RSA 126-M, which shall be credited to the New Hampshire health access fund established in RSA 126-M:8.

4 Applicability. The commissioner of health and human services shall call the first meeting of the health access board, established in RSA 126-M:4 inserted by section 2 of this act, within one year of the effective date of section 2 of this act or federal approval of the medicaid waiver, whichever first occurs.

5 Appropriation. The sum of \$250,000 is hereby appropriated for the biennium ending June 30, 2001 to the New Hampshire health access fund established in RSA 126-M:8, for the startup costs of RSA 126-M established in section 2 of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

6 New Section; Report Required. Amend RSA 126-A by inserting after section 4 the following new section:

126-A:4-a Health Care Plan Report Required. The department of health and human services is responsible for activities to improve and protect the health and well-being of citizens of the state of New Hampshire. A part of such activities is an assessment of the health status of the residents of New Hampshire. The department shall continually conduct such an



assessment and shall issue a report thereon to the governor, the president of the senate, and the speaker of the house every 2 years commencing on December 31, 2000.

7 New Section; Transfer to Health Care Fund. Amend RSA 126-A by inserting after section 5 the following new section:

126-A:5-a Transfer to Health Care Fund. At the close of each state fiscal year, any operating budget surplus in the department's accounts, as determined by the commissioner, shall be transferred by the commissioner of administrative services in the following manner: 50 percent of the surplus shall be transferred into the health care fund established pursuant to RSA 167:70, and 50 percent of the surplus shall lapse to the general fund.

8 Medicaid Revenues. If at the close of state fiscal year 1998, or any subsequent fiscal year, the commissioner of health and human services determines that net medicaid revenues received in that state fiscal year are recoveries of medicaid revenues applicable to state fiscal year 1997 or prior state fiscal years, the commissioner of administrative services shall transfer the amount of such revenues, as determined by the commissioner of health and human services, from the general fund into the health care fund, established pursuant to RSA 167:70, provided that transfers shall be made only when, and to the extent that, the assets and accumulated income in the fund are less than the sum of \$100,000,000. The initial transfer under this section shall be \$7,421,476.

9 New Subparagraph; Pharmaceutical Services. Amend RSA 126-A:3, III by inserting after subparagraph (d) the following new subparagraph:

(e) When a person is being assisted by a city, town, or county in the purchase of a drug product, pursuant to RSA 165 or RSA 166, no provider of pharmaceutical services shall bill or charge the person, city, town, or county for the drug product at a rate in excess of the rate that would be billed or charged the department of health and human services for that product.

10 Effective Date.

I. Sections 1-5 and 7-8 shall take effect July 1, 1999.

II. The remainder of this act shall take effect 60 days after its passage.

**1999-1009s**

### AMENDED ANALYSIS

This bill:

(1) Establishes a New Hampshire health access corporation and health access fund modeled on the healthy kids corporation and makes an appropriation for such purpose.

(2) Requires the department of health and human services to make a biennial report on the health status of New Hampshire residents.

(3) Authorizes 50 percent of any operating budget surplus remaining in the department of health and human services' accounts at the close of any fiscal year to be transferred to the health care fund.

(4) Authorizes certain transfers of medicaid revenues to the health care fund.

(5) Requires that the rates paid for pharmaceutical services by a city, town, or county pursuant to RSA 165 or RSA 166 shall not be in excess of the rates paid by the department of health and human services for such services.

SENATOR SQUIRES: This amendment, which occurs on page 12 - 16 of the calendar is long. It replaces the bill as you have it in your packet. The original bill had a number of proposals in it which were at the re-

quest of the then commission of Health and Human Services, but when that change took place, we restructured the bill and brought it forth in a series of amendments. The bill accomplishes four goals. It requires the department to make a biennial report on the health status of New Hampshire citizens. It establishes a health access corporation intended to begin to address the problem of uninsured working adults in New Hampshire who lack health insurance. Thirdly, it provides for certain transfers for the Health Care Fund, and finally, it requires that the rates paid for pharmaceutical services by a city, town or county shall not be in excess of the rates currently being paid under Medicaid. The Health Access Corporation established by this legislation reflects the widespread desire and awareness that we have about 110,000 people in New Hampshire who do not have health insurance, whose costs are borne by the rest of society. It also seeks to rebuild the Health Care Fund and it extends to municipal and county welfare assistance programs, the same favorable reimbursement rate for drugs that are paid by the state under Medicaid. This bill, setting the charge to municipalities at the same rate, will potentially save 40 percent for prescriptions costs. All four elements of this bill are in the best public interest and I ask for your support. Thank you.

SENATOR MCCARLEY: Just very briefly. This bill, while I am not a sponsor on this bill because I had some concerns in terms of the breadth of the bill at the time of sign off. Certainly it touches on some issues that I think that we worked on for the last two years. I guess that I am really rising to say that I commend Senator Squire's efforts on keeping these things very much on the front burner. I think that the Health Access Corporation is a very big step forward and the issue of trying to deal with pharmaceutical drug crisis is also, so I just wanted to rise and say that I think that this is another really good step forward and to specifically thank Senator Squires for keeping it on the front burner amid all of the other things that are on all of our burners.

**Amendment adopted.**

**Referred to the Finance Committee (Rule #24).**

**SB 206-FN-A-L**, establishing the tobacco use prevention fund and continually appropriating a special fund. Public Institutions, Health and Human Services Committee. Vote 6-0. Ought to pass with amendment, Senator Squires for the committee.

**1999-1005s**

**01/10**

### **Amendment to SB 206-FN-A-LOCAL**

Amend the title of the bill by replacing it with the following:

**AN ACT** establishing the tobacco use prevention fund and continually appropriating a special fund and relative to the health care fund.

Amend the bill by replacing section 1 with the following:

#### **1 Purpose.**

I. The general court recognizes that the use of tobacco is the number one public health problem both in the country and in the state of New Hampshire. More people die prematurely from tobacco-related causes than from any other factor. This heinous problem is especially troublesome because of the reprehensible way tobacco manufacturers target youth. The settlement of the litigation by New Hampshire and other states against tobacco companies has provided an opportunity to

address this critical public health problem in this state. The emphasis within the settlement on actions to reduce and prevent tobacco use among young people is all the more relevant to New Hampshire where the rate of tobacco use among children is among the highest in the country. The general court recognizes that prevention is a key strategy for reducing consumption of tobacco and consequently decreasing chronic illnesses, premature deaths, and excessive health care costs.

II. The general court recognizes that funds are provided through the settlement both for prevention activities and to reimburse the state for costs incurred in providing treatment to persons whose illnesses and disabilities have resulted from tobacco use. It is acknowledged that county governments pay a portion of medicaid costs and a share of the funds provided through the settlement should be returned to the counties.

III. The general court recognizes that action needs to be taken to assure the continuous availability of funds to support tobacco prevention activities. The success of the health care fund established by RSA 167:70 and its community grant program provides a model which can be used to assure widespread and effective distribution of tobacco prevention project funds for activities that have broad community support and participation.

IV. The general court recognizes the need to develop tobacco prevention programs that are comprehensive and sustainable over time. The general court finds that the United States Centers for Disease Control and Prevention have developed a successful tobacco control model supported by evidence-based studies which includes community programs to reduce tobacco use and the burden of tobacco-related diseases, tobacco prevention programs for schools, enforcement of tobacco-control laws, partnership grants with other tobacco prevention organizations, tobacco counter-marketing, and smoking cessation programs.

Amend RSA 126-K:15, II as inserted by section 2 of the bill by replacing it with the following:

II. Upon receipt by the state of New Hampshire of funds as a result of the settlement in 1998 of litigation against tobacco companies, the balance of the funds remaining after the distribution in accordance with all other statutory requirements and before the distribution enumerated in section 3 of this act, the sum of \$10 for each resident of the state, as determined by the office of state planning, shall be deposited into the fund. Amend the bill by replacing all after section 2 with the following:

3 Distribution of Funds to Counties. Upon receipt by the state of New Hampshire of funds as a result of the settlement in 1998 of litigation against tobacco companies, the sum of up to 10 percent of funds remaining after distribution in accordance with all other statutory requirements shall be appropriated and disbursed to county governments. The allocation to each county shall be based upon the proportion that each paid to the state in the prior state fiscal year pursuant to RSA 167:18-b. The governor is authorized to draw a warrant for said sums out of funds received by the state from settlement of the tobacco litigation.

4 Health Care Fund. Upon receipt by the state of New Hampshire of funds as a result of the settlement in 1998 of litigation against tobacco companies, the sum of 50 percent of the balance remaining after distribution to the counties, pursuant to section 3 of this act, and to the tobacco use prevention fund, established in section 2 of this act, shall be deposited into the health care fund established by RSA 167:70.

5 Medicaid Costs. Upon receipt by the state of New Hampshire of funds as a result of the settlement in 1998 of litigation against tobacco companies, the sum of 50 percent of the balance remaining after distribu-



tion to the counties, pursuant to section 3 of this act, and to the tobacco use prevention fund, established in section 2 of this act, shall be allocated and are hereby appropriated to the department of health and human services to reimburse the department for the cost of medicaid long-term care services. The governor is authorized to draw a warrant for said sums out of funds received by the state from settlement of the tobacco litigation.

6 New Subparagraph; Special Fund. Amend RSA 6:12, I by inserting after subparagraph (vvv) the following new subparagraph:

(www) Moneys received under RSA 126-K:15, which shall be credited to the tobacco use prevention fund.

7 Clarification of Fund Initiatives. Amend RSA 167:71, I to read as follows:

I. Fund the planning and implementation of public or private health initiatives which promote access to or improve the quality of available health care services; ***including initiatives which assist people in obtaining health insurance, long-term care insurance, dental care, and prescription drugs.***

8 Health Care Fund; Limitations. Amend RSA 167:74, I to read as follows:

I. Health care initiatives as established in RSA 167:71 shall be available for a limited time period which shall not exceed 4 years, ***except when a longer period of support is determined to be necessary by the commissioner of health and human services.***

9 Reference Deletion. Amend RSA 9:13-e, II to read as follows:

II. There is hereby established within the general fund general ledger a revenue stabilization reserve account. At the close of each fiscal biennium, any surplus, as determined by the official audit performed pursuant to RSA 21-I:8, I(h) shall be transferred by the comptroller in the following manner: 50 percent to a special nonlapsing revenue stabilization reserve account and 50 percent to the health care fund established pursuant to RSA 167:70; provided, however, that in any single fiscal year the total of such transfers shall not exceed 1/2 of the total potential maximum balances allowable under paragraph V ~~(and RSA 167:74, II)~~. The comptroller is hereby directed to establish the revenue stabilization reserve account in which to deposit any money received from a general fund operating budget surplus. The state treasurer shall invest funds in this account as authorized by RSA 6:8. The interest so earned shall be deposited as unrestricted general fund revenue.

10 Repeal. RSA 167:74, III, relative to certain fund limitations, is repealed.

11 Effective Date. This act shall take effect upon its passage.

1999-1005s

#### AMENDED ANALYSIS

This bill establishes the tobacco use prevention fund into which \$10 per resident after distribution in accordance with other statutory requirements of the funds received by the state of New Hampshire as a result of the settlement of the litigation against tobacco companies shall be deposited. The fund is to be used by the department of health and human services for tobacco prevention activities.

The bill distributes up to 10 percent of the litigation settlement funds after all other statutory requirements, including the tobacco use prevention fund, to the counties for reimbursement of nursing homes and to the department of health and human services for reimbursement for long-term care costs.

The bill distributes 50 percent of the balance remaining after distribution to the counties and to the tobacco use prevention fund of such settlement funds to the health care fund and 50 percent of such balance to the department for the cost of medicaid long-term care services.

The bill clarifies the initiatives of the health care fund.

**SENATOR SQUIRES:** In your calendar you will find an amendment, pages 16-18. This bill is the first casualty of HB 117. As initially presented or conceived, there was obviously going to be uses for the tobacco fund which, as the session developed, you could sense wasn't going to happen. So the bill was rewritten to reflect reality. What it does is establish a series of priorities which are as follows: 1) Education, cessation and prevention. 2) to try and meet our county obligations. 3) offset ongoing costs to the Department of Health and Human Services for tobacco related problems. 4) to rebuild the Health Care Fund. The portion now that is left for these purposes is diminished, and the group that takes the biggest hit in the bill and in the world in which we find ourselves in, are the counties. I don't know how to get around that. There just simply are not the necessary funds available currently, to allow a proper level reimbursement. If the formula changes in the bill, in HB 112 as it winds its way through the process, this bill will automatically correct itself, as more funds become available. So it is designed to be flexible to meet the needs as best as we can with these funds when and if they become available. I wish it were more, it isn't; nevertheless, I hope that you will support it as we go forward to try to at least begin to bring more pressure to bear to try to stop the continued growth of tobacco consumption. Thank you.

**SENATOR F. KING:** Senator Squires, if we pass this bill today, would we assure the counties of getting at least 6.5 percent of the tobacco settlement money?

**SENATOR SQUIRES:** No.

**SENATOR F. KING:** Which bill would take precedence? We would have two competing bills; both adopted by the legislature with the same dollars?

**SENATOR SQUIRES:** Well the amendment replaces the bill.

**SENATOR F. KING:** So there are no opportunities for the counties to get the money?

**SENATOR SQUIRES:** At the present level of expenditures, the answer is no.

**SENATOR F. KING:** Thank you.

**Amendment adopted.**

**Referred to the Finance Committee (Rule #24).**

**HCR 4**, urging the U.S. Secretary of Transportation to include U.S. Route 2 as a border corridor highway. Transportation Committee. Vote 3-0. Ought to Pass, Senator Below for the committee.

**SENATOR BELOW:** Testimony received at the public hearing stated that this Resolution is an important part of the proposal for funding, which is being submitted to the U.S. Secretary of Transportation to show the support in all three northern New England states for this project. Under the provisions of the Hutchinson Amendment, special federal highway monies are available for international border transportation corridors. The designation of Route 2 will encourage economic

development along this corridor, and this Resolution has the full support of the New Hampshire Department of Transportation, as well as the congressional delegations of Maine, New Hampshire and Vermont. The Senate Transportation Committee recommends that HCR 4 be ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 204-FN**, relative to driving after license revocation or suspension. Transportation Committee. Vote 3-0. Ought to pass with amendment, Senator Roberge for the committee.

**1999-0957s**

**05/09**

**Amendment to HB 204-FN**

Amend the bill by replacing paragraph V-a(a) as inserted by section 2 with the following:

V-a.(a) Except as provided in subparagraph (b), any person who drives a motor vehicle in this state during the period of suspension or revocation of his or her license or driving privilege and is involved in a collision resulting in death or serious bodily injury as defined in RSA 625:11, VI, to any person shall be guilty of a class B felony, where such person's unlawful operation of the motor vehicle caused or materially contributed to the collision. Evidence that the driver violated any of the rules of the road in causing or materially contributing to the collision is prima facie evidence of unlawful operation of a motor vehicle.

SENATOR ROBERGE: Mr. President and members of the Senate, HB 204 establishes the penalty as a class B felony for collisions resulting in death or serious bodily injuries for those driving under revocation or suspension. The current statutory provision for driving under suspension or revocation is merely a violation. Testimony received at the public hearing stated driving after suspension or revocation is a difficult enforcement problem, as 75 percent of these people continue to drive. For the years 1994 to 1998, six drivers under suspension killed people in New Hampshire. It is the feeling of the Department of Safety that this law will help to save lives. The Senate Transportation Committee recommends that HB 204 be ought to pass as amended.

**Amendment adopted.**

**Referred to the Finance Committee (Rule #24).**

**HB 365**, establishing a committee to study the current practice of posting roads and its effect on the economy. Transportation Committee. Vote 4-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: In many communities in the state, particularly in the North Country, roads are posted for weight limits in the spring to prevent damage to pavement. Testimony received at the public hearings on this bill stated that some towns arbitrarily post roads with no exceptions. Limits are also inconsistently applied. For example, 20 tons of freight may be banned while 20 tons of fuel oil can proceed. Truckers, who are forced to shut down operations during the time that roads are posted, frequently have to borrow money to make it through the spring. Canada allows trucks to run during mud season with a 20 percent reduced load limit. This might be an approach, which could be applied and adopted in New Hampshire. It is the hope of those proposing the study



committee that some agreement can be reached in addressing these issues. The Senate Transportation Committee recommends that HB 365 be made ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 403**, relative to speed limits on Turtle Town Pond in Concord. Transportation Committee. Vote 4-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: House Bill 403 reenacts the speed limit provisions for the frozen surface of Turtle Town Pond in Concord which were repealed on June 30, 1998. In 1996 the legislature put into place legislation which restricted the speed on the ice surface of Turtle Town Pond to 55 miles per hour. It also granted joint jurisdiction to the city of Concord with New Hampshire Fish and Game Department for enforcement. The previous legislation was sunsetted on June 30, 1998. This would put that legislation back into affect. The Transportation Committee recommends that HB 403 be ought to pass.

SENATOR LARSEN: Mr. President, I just rise to say that this is a little bill, but it is a big important bill to the city of Concord. It has been an issue before city council for many years. That speed limit on Turtle Town Pond needs to remain at 55. Thanks.

**Adopted.**

**Ordered to third reading.**

**HB 447**, repealing the laws prohibiting certain promotional games. Transportation Committee. Vote 3-0. Ought to Pass, Senator Trombly for the committee.

SENATOR TROMBLY: Mr. President and members of the Senate, HB 447 was brought to us because in the early 70's the sellers of gasoline felt that they had been strong-armed by the corporate giants for whom they sold their gas into participating in promotional games. While they have come full circle and now want to participate in those games. The games are similar to the McDonald's games and the Pepsi Twist Cap games and they feel that it would be a benefit for their businesses. We feel that since they have come full circle and they are asking for this legislation and it will help them in their businesses, we ought to pass this bill. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 179-FN**, allowing for motor vehicle license suspension or revocation for certain minors. Transportation Committee. Vote 3-0. Ought to pass with amendment, Senator Gordon for the committee.

**1999-0980s**

**01/09**

### **Amendment to SB 179-FN**

Amend the title of the bill by replacing it with the following:

AN ACT allowing for motor vehicle license revocation for certain minors possessing or using tobacco products.

Amend the bill by replacing all after the enacting clause with the following:

1 Possession and Use of Tobacco Products by Minors; Revocation of Driver's License. Amend RSA 126-K:6, V to read as follows:

V. Any minor who violates this section shall be guilty of a violation and shall be punished by a fine not to exceed \$100 for each offense or shall be required to complete up to 20 hours of community service for each offense, or both. *In addition, the minor shall have his or her driver's license revoked for 30 days for the first violation, and 90 days for any subsequent violation.* Where available, punishment may also include participation in an education program.

2 Effective Date. This act shall take effect January 1, 2000.

1999-0980s

#### AMENDED ANALYSIS

This bill makes persons under the age of 18 possessing or using tobacco products subject to revocation of their driver's license.

SENATOR GORDON: Senate Bill 179 would provide for the revocation of the driver's license of a minor who is convicted of violating our tobacco laws. The first conviction would result in the loss of license for 30 days, subsequent convictions would result in the loss of the license for 90 days. Studies have shown that if a person does not begin smoking by the age of 18, the odds are good that they will never start. Recently passed legislation removing the driver's licenses of minors who are caught speeding, has proven to be very effective. The sponsors of this legislation feel that the loss of a driver's license is an appropriate means to positively impact the occurrence of teen smoking. The Senate Transportation Committee recommends that SB 179 be ought to pass as amended.

SENATOR TROMBLY: Senator Gordon, I apologize for not being at the committee hearing of the vote. Is it wise that we take away a teenager's right or their privilege to drive because they smoke a cigarette? It just seems to me that if there is...particularly in the more rural areas of this state, that if they work at a McDonalds or something like that, it might be 15 miles away, and if they are caught with cigarettes that they are not going to be able to work to save money for college? Is that an appropriate remedy do you think?

SENATOR GORDON: I think that is a decision for you to make. I happen to think that it is, Senator Trombly. The fact is that we should be taking the tobacco laws seriously. We enacted legislation a couple of years ago here in the Senate that increased the fines for tobacco usage. We increased those fines to \$100 and we also put in other penalties into the law. The fact is that for the most part, the police don't prosecute because they don't think that those penalties are sufficient enough in order to inhibit young people from smoking. This would provide a serious means of showing minors in this state that we are in fact serious about enforcing the law. I might add that the revocation...the original bill came in with a provision that all that would be required would be a sworn statement by a police officer indicating that they had seen an individual smoking. The amendment, which has been added on to this bill, would mean that this child would have to be convicted of having possessed tobacco products in a manner contrary to our law. So that actually there is due process built into this whole system.

SENATOR TROMBLY: So what the amendment does is say that if you carry your friend's pack of cigarettes, but don't even smoke one, then you can lose your driver's license. Is that correct?

SENATOR GORDON: The current law, as it exists, without changing the law is, that if you possess tobacco products and you are under 18 years of age, if your parents send you down to the store to buy a pack of cigarettes and you are 17 and you do that and you bring them back, you are in violation of the law. That is correct.

SENATOR TROMBLY: Thank you very much.

SENATOR RUSSMAN: Just so that you are aware... and I think that I voted to go along with this and I have reservations about it because if you are caught smoking pot you don't lose your license, ok? But if you are caught smoking cigarettes you do. That is how...well this is bizarre the way that things get turned around. I guess it is like, what do you want your kids smoking? You don't want them smoking anything I realize, but the notion that you can smoke pot and still drive and then you smoke cigarettes and lose your license, you do wonder about some of the things that we do here.

**Recess.**

**Out of Recess.**

Senator Larsen moved to have **SB 179-FN**, allowing for motor vehicle license suspension or revocation for certain minors, laid on the table.

**Adopted.**

### **LAID ON THE TABLE**

**SB 179-FN**, allowing for motor vehicle license suspension or revocation for certain minors.

**HJR 1**, requesting that the federal government prohibit the U.S. Fish and Wildlife Service or other federal agency from introducing wolf populations to the northeastern United States, especially New Hampshire. Wildlife and Recreation Committee. Vote 3-2. Ought to Pass, Senator Krueger for the committee.

SENATOR KRUEGER: Mr. President, I would like to defer to the Chairman of the Wildlife and Recreation Committee, Senator Disnard.

SENATOR DISNARD: HJR 1 and HB 240 are similar bills. They are both heard jointly. HJR 1 refers specifically to the federal government and HB 240 refers specifically to the state government. This resolution, along with HB 240, which is also on today's calendar, are intended to forestall the reintroduction of wolves into New Hampshire. The committee received petitions supporting both the resolution and the legislation signed by more than 4,000 people mostly from the North Country with reintroduction which will mostly occur. We heard from Senator Fred King that steps to reintroduce wolves would interfere with the natural processes by tricking nature into something that it isn't ready to do. We heard from others that the presence of wolves, which are an endangered species, would limit other commercial and recreational activities in the Great North Woods. We heard that the wolves would prey on deer and moose, which attract sportsmen, and tourist, and we heard that wolves would threaten the domestic livestock. We heard that wolves would endanger those pursuing outdoor activities. We also heard that all this was unnecessary because there is no sign that any federal or state agency is even contemplating reintroducing wolves. The majority of the committee felt public sentiment on the issue simply could not be ignored, and that by adopting this resolution as well as even passing HB 240, would be telling the government, "don't even think about it." The majority of the committee recommends ought to pass. I would like to indicate that most of the letters and cor-



responsidence in support was from out-of-state and in state, Fish and Game opposed it, New Hampshire Timberland Owners opposed, the forest products contribute more than \$3.9 billion and the people involved in this opposed. Private landowners opposed. The unions opposed. Champion International opposed and some threatened to close their land. These people were and are opposed to the introduction of wolves. On the other side, people are against the bill, thus favoring the reintroduction of wolves, felt that there should be scientific studies so that an intelligent decision could be made. It is a very emotional bill.

**SENATOR FERNALD:** Senator Disnard, if we had wolves and they preyed on moose, wouldn't that help save some of Senator Kings' constituents sugar maples?

**SENATOR DISNARD:** I will leave that up to you.

Senator Russman moved to have **HJR 1**, requesting that the federal government prohibit the U.S. Fish and Wildlife Service or other federal agency from introducing wolf populations to the northeastern United States, especially New Hampshire, laid on the table.

**Adopted.**

### **LAI D ON THE TABLE**

**HJR 1**, requesting that the federal government prohibit the U.S. Fish and Wildlife Service or other federal agency from introducing wolf populations to the northeastern United States, especially New Hampshire.

**HB 203**, making impaired boating laws consistent with driving while intoxicated laws. Wildlife and Recreation Committee. Vote 6-0. Ought to Pass, Senator Trombly for the committee.

**SENATOR TROMBLY:** House Bill 203 is a housekeeping bill in that the legislature earlier voted to apply the drunk driving laws to driving a boat while you were impaired. The one thing that the legislature left out was the revocation of your driver's license for refusal to take a breath or blood test. House Bill 203 simply brings the drunk boating laws to go hand and glove with the drunk driving laws by adding to the license revocation for refusal to take a test. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**Recess.**

**Out of Recess.**

**HB 240**, prohibiting the reintroduction of wolf populations to the state of New Hampshire. Wildlife and Recreation Committee. Vote 3-2. Ought to Pass, Senator Disnard for the committee.

**SENATOR DISNARD:** I would defer to Senator Russman.

Senator Russman moved to have **HB 240**, prohibiting the reintroduction of wolf populations to the state of New Hampshire, laid on the table.

**Adopted.**

### **LAI D ON THE TABLE**

**HB 240**, prohibiting the reintroduction of wolf populations to the state of New Hampshire.

**HB 302**, relative to paint ball guns. Wildlife and Recreation Committee. Vote 5-0. Ought to Pass, Senator D'Allesandro for the committee.

**SENATOR D'ALLESANDRO:** This bill extends the restrictions on the distribution of air rifles to persons younger than 18 to paint ball guns. The committee heard that paint ball guns have been used in acts of vandalism. Likewise, the committee heard that paint ball guns are intended for use in controlled surrounding with appropriate protective clothing and equipment. Misused and abused, paint balls can pose a threat to safety especially to the eyes. In no way does this bill restrict or regulate paint ball games. As a matter of fact, Senator Trombly has challenged Senator Wheeler to one of those paint ball games. That is on the docket. That is on the docket as we speak. It simply treats paint ball guns like air rifles by restricting their sale to persons under the age of 18 without the written consent of a parent or guardian. The committee unanimously recommends ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 710-FN**, relative to expanding the availability of lifetime licenses for hunting and fishing. Wildlife and Recreation Committee. Vote 7-0. Ought to Pass, Senator Trombly for the committee.

**SENATOR TROMBLY:** Currently, in order to buy a common lifetime hunting and fishing license you have to buy a combination license. This bill will allow people to buy either a combination hunting or a fishing license and it allows them to be bought for people at a very early age so that you can buy them for gifts for grandchildren, children and etceteras. If you buy a lifetime hunting license for someone, they still have to complete the hunter education courses. It also makes a provision that allows people who move in and out of the state for occupational reasons, to be able to buy a lifetime license, in that now you have to remain a resident of the state your entire life in order to benefit from this type of license. This was requested by Fish and Game, and they believe that it will increase their resources. The committee asks you to vote for this bill. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 29-L**, relative to the proper sheltering of dogs. Wildlife and Recreation Committee. Vote 6-0. Ought to pass with amendment, Senator Wheeler for the committee.

**1999-0947s**

**08/09**

### **Amendment to SB 29-LOCAL**

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Shelter for Dogs; Protection from the Weather and Humanely Clean Conditions. Amend RSA 466 by inserting after section 30-b the following new section:

466:30-c Shelter for Dogs. No person owning or responsible for confining or impounding any dog shall fail to provide the animal with proper shelter, protection from the weather, or humanely clean conditions as prescribed in this section.

I. Minimum indoor standards for shelter shall be as follows:

(a) The ambient temperature shall be compatible with the health of the animal.

(b) Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animal at all times.

II. Minimum outdoor standards of shelter shall be as follows:

(a) When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight.

(b) Shelter from inclement weather shall have an area within to afford the animal the ability to stand up, turn around and lie down, and be of proportioned size as to allow an animal's natural body heat to be retained.

(c) No animal may be confined in a building, enclosure, car, boat, vehicle or vessel of any kind when extreme heat or extreme cold will be harmful to its health.

III. Minimum standards of sanitation necessary to provide humanely clean conditions for both indoor and outdoor enclosures shall include periodic cleanings to remove excretions and other waste materials, dirt, and trash to minimize health hazards.

IV. Any person in violation of this section shall first be given a written warning of notification of the requirements of this section by any law enforcement officer, animal control officer, or officer of a duly licensed humane society. Any person who fails to comply with the provisions of this section within 48 hours after such written warning shall be guilty of a violation.

2 Effective Date. This act shall take effect January 1, 2000.

**1999-0947s**

#### AMENDED ANALYSIS

This bill requires anyone owning or responsible for a dog to provide adequate shelter for the animal, and sets out what is necessary for adequate shelter. This bill also provides an enforcement and penalty provision.

SENATOR WHEELER: Senate Bill 29 seeks to ensure that those responsible for keeping dogs provide them with sufficient protection from the weather and humanely clean conditions. The original bill, as drafted and presented to the committee first, required those who keep their dogs outside for an extended period to provide the dogs with a dog house. We heard a lot of testimony about huskies and dogs that love cold weather who not only didn't need a dog house, but when one was provided, were found sleeping on top of it. So we realized that we didn't want to be that specific about a dog needing a dog house; therefore, in the amendment, which the committee spent some time on, there are no specific requirements; instead, it sets standards for protection from the extremes of temperature based on the particular needs, circumstances and conditions of the animal, understanding that all of these dogs are different. The bill requires that animals kept outdoors, these are actually just dogs, be sufficiently protected against extreme heat and severe cold by either natural or artificial means. If a shelter is provided, it must be suited to the size of the dog and provide enough space for movement. The bill also forbids confining animals so that heat or cold could threaten their health. In other words, leaving them in the car with the windows up on a hot day. Finally, the bill requires dogs to be kept in sanitary conditions. The first offense for this, is a warning. If you fail to comply, then there is a violation. I want to remind you all that a violation is a fine. It is not a misdemeanor, it is not a felony, it is not a trial by jury and it is not in-



carceration. This is a simple bill grounded on common sense. It requires nothing more than that the dog owners ensure that their animals are protected from severe weather and kept in sanitary conditions. The committee unanimously recommends ought to pass with amendment.

**Amendment adopted.**

**Ordered to third reading.**

**Senators Francoeur, Gordon and McCarley are in opposition to SB 29-L.**

**SB 46-FN**, relative to the applicability of mooring permit requirements. Wildlife and Recreation Committee. Vote 5-0. Rereferred to Committee, Senator Disnard for the committee.

**SENATOR DISNARD:** Senate Bill 46 would extend the mooring permit requirements to all state-owned public bodies of water by the year 2002. This is a very controversial bill that addresses a serious problem. The committee believes that this issue requires more study than the session has allowed, and unanimously ask that the bill be re-referred to committee.

**Adopted.**

**SB 46-FN is rereferred to the Wildlife and Recreation Committee.**

**SB 59-L**, relative to bonding of animal owners convicted of animal cruelty. Wildlife and Recreation Committee. Vote 6-0. Ought to pass with amendment, Senator Roberge for the committee.

**1999-0577s**

**08/01**

### **Amendment to SB 59-LOCAL**

Amend RSA 644:8, IV(b) as inserted by section 1 of the bill by replacing it with the following:

(b) If a person convicted of cruelty to animals appeals the conviction and any confiscated animal remains in the custody of the arresting officer or the officer's designee pending disposition of the appeal, in order for the appellant to maintain a future interest in the animal, the trial court may require the appellant to post a bond or other security in an amount not exceeding \$2,000 for each animal in custody for costs expected to be incurred for the board and care of the animal during the appeal. If the conviction is affirmed on appeal, the costs incurred for the board and care of the animal shall be paid to the custodian from the posted security and the balance, if any, returned to the person who posted it.

**1999-0577s**

### **AMENDED ANALYSIS**

This bill allows the court to require a person convicted of animal cruelty to post bond in an amount not exceeding \$2,000 for each animal in custody, in order to maintain a future interest in the animal, while an appeal is pending. The bond is used to pay board and care costs during the appeal.

**SENATOR ROBERGE:** Mr. President and members of the Senate, this bill allows, but does not require, the court to require persons convicted of animal cruelty who appeal their conviction to post a bond to retain an interest in the animal pending the outcome of the appeal. The amount of the bond may not exceed \$2,000 for each animal held in custody. If the conviction is upheld, the proceeds of the bond are applied to the cost

of board and care for the animals that would otherwise be borne by the Humane Societies and municipalities. In cases involving a large number of animals that have been severely abused, the cost of the board and veterinary care may be significant. If the appeal succeeds, the bond is released. The bill applies only when the owner has been convicted and appeals the conviction, and it applies only to the cost incurred during the appeal process. The committee concluded that it was only responsible for those convicted of animal cruelty to pay their fair share of the cost. The committee recommends ought to pass as amended.

**Amendment adopted.**

**Ordered to third reading.**

**SB 154**, relative to wildlife species under the endangered species conservation act. Wildlife and Recreation Committee. Vote 5-1. Inexpedient to Legislate, Senator D'Allesandro for the committee.

**SENATOR D'ALLESANDRO:** This bill would have prohibited any species for which funds have been allocated by the endangered species act from ever being classified as game species. The committee felt that the bill was an unnecessary restriction on wildlife management because species, which may have been listed as endangered, may become sufficiently plentiful to warrant removal from the endangered species list. The committee also felt that since one legislature cannot bind future legislatures, that the bill, as drafted, would not achieve its purpose. The majority of the committee recommends inexpedient to legislate.

**Committee report of inexpedient to legislate is adopted.**

### RECONSIDERATION

Senator Wheeler having voted on the prevailing side moved reconsideration on **SB 194-FN-A**, dedicating certain sums in the moose management fund for the payment for damage done by moose to certain trees, whereby we ordered it to third reading.

**Adopted.**

**SB 194-FN-A**, dedicating certain sums in the moose management fund for the payment for damage done by moose to certain trees. Ought to pass.

**SENATOR WHEELER:** After giving a lot of consideration to this bill, I look back fondly on how much amusement that we had out of it, and the great one line about moose not being able to read. I have reconsidered, and I do believe that allowing moose damage to be paid to farmers from the moose fund does set a precedent that we need to examine more closely before we pass this individual measure. I think that we need to have a policy about game damage, but I don't think that we should start with one piece at a time; therefore, I urge your vote on reconsideration of the ought to pass motion. In other words, vote no.

**SENATOR F. KING:** Interestingly enough, the day that we passed this, I arrived home and I received my annual call from the gentleman who has the sugar orchard. Had I known that this was coming up today, I would have brought my notes up. I guess that I will have to try to recall the conversation from memory. He reported to me that this year he went to check his storage tank in his maple sugar orchard and he found it empty. The same day, his neighbor, who has roughly the same number of taps, and has a sugar orchard that faces the same way, made 37 gallons of syrup. He went into the woods and found that the moose had

walked through his main line and all of his sap went onto the ground. 37 gallons of syrup at \$30 a gallon is a substantial amount of money for this gentleman who is 71 years old. He and his wife have lived on this farm for years and they no longer keep cows. They have a very minimal social security check. The money that they get from the annual harvest of maple syrup is very significant to these people. I was going to have a little show and tell because I said that people wonder how you know the moose did the damage. He mentioned that there was moose scat all over the place. For those of you who don't know, that is a scientific name for moose dung. So I said, I would like to have you go and get a plastic bag of that and when we have a hearing in the House on this bill, if we do, I will present that as evidence that the moose were there and, in fact, damaged your pipe line. So I think that this money should be available. The money is in the fund and people such as this should be able to recoup that damage. He told me that he has been sending bills to the state for 14 years on this issue. He said that he came down and met with four fellows one day. They told him that they didn't think that maple sugaring was an annual crop. He told them that if he sugared every spring and has for 40 years, would that make it an annual crop? I think that it probably would. So he obviously has tried other ways to recover his loss, and I think that it would be very unfortunate for this gentleman if we reconsider this vote. We may have had some laughs that day, but this is a serious issue. At \$37 a gallon and 30 gallons gone, that is a lot of money for a gentleman who is depending on a very small social security check for he and his wife. It is simply unfair not to do that.

SENATOR DISNARD: I think that you all received a copy of an article that I wrote for a local newspaper, "Who owns the animals?" Just think what we are doing? Think of how many sugar orchards, think of how many moose...are we going to set a precedent every time that someone has a problem with an animal, a wild animal or in this instance, a tree or an orchard? Are we going to ask the sportsmen to pay for it? Do you realize that sportsmen pay for all search and rescue? Are you aware that in the Winnepesaukee derby on figures developed by the federal government in those three days, \$4 million is expended in that area? Are you aware that HB 704 that will be coming to us in which the sportsmen and the Fish and Game Club has agreed to help the orchardists where most of the problems are and expend over \$750,000 over a ten-year period? That would be \$100,000 each year for the first three years, \$75,000 the fourth year and \$50,000 each year after, 5 - 10 years. Why should the sportsmen's dollar...if this is such a big problem...and also as I mentioned before, commissioner Judd...when I was commissioner of Fish and Games several years ago, begged the Fish and Game not to allow too much culling of the moose because he was trying...and the fish and game, were trying to bring down the herd in terms of size because the restaurateurs and the people who are guiding and the people who are selling gasoline and the people who rent rooms in Pittsburg and in Colebrook were complaining that if they did size the herd, they would lose lots of money. How can it be both ways? I am just asking you...let's give a fair shake to the sportsmen. If Senator King thinks it is such a big problem, why doesn't he introduce a bill to have the state pay for it? Thank you.

SENATOR F. KING: Senator Disnard, is the money that is in the Moose Fund, is that available for search and rescue operations?



SENATOR DISNARD: For this year it probably is, but I guess that you understand that at the hearing, if you stayed that long, that they are building up a habitat and they plan to delete that fund in the next three or four years. So what you are doing would be a precedent for every year.

SENATOR F. KING: Do you think that the owners of the apple orchards in the southern part of New Hampshire have a greater claim on state assistance? I think that I just heard you say that they are going to spend \$750,000 to protect the apple orchards over a number of years.

SENATOR DISNARD: Yes. The 25 percent would be paid by the apple orchardists and 75 percent by the state. Yes.

SENATOR F. KING: And you think that the apple orchard owners have a greater claim for damage recovery than does the 71-year-old man in my district?

SENATOR DISNARD: In considering the amount of money that those apple orchards bring into the state, the answer is yes.

SENATOR FRANCOEUR: Senator King, since we had so much fun a couple of weeks ago with my question on whether the moose could read the posted signs, I have a concern for your individual there, also that whether he is 71 or 51, that he still has damage done to his property. I think that all of us recognize that when New Hampshire brings in a lot of money on tourism and a lot of people come here to see the moose, the deer and the other animals. I think that Senator Disnard put it very eloquently when he said that it belongs to the property of everybody. Senator King, I could support you today if this was coming out of general funds, whether it was for this or for the deer. When we make the hunters be the ones that pay for it, specifically through their funds, it doesn't seem fair where they already carry an undue burden already on their part through their licenses and fees that all of the rest of us gain from. I thank you for giving me a few minutes and Senator King, as I mentioned, I could support that if you would like to bring in a bill, I could work with you on that. I would ask the committee to vote against this. Senator Fraser moved to have **SB 194-FN-A**, dedicating certain sums in the moose management fund for the payment for damage done by moose to certain trees, laid on the table.

**A division vote is requested.**

**Yeas: 7 - Nays: 15**

**Motion failed.**

**Recess.**

**Out of Recess.**

**Question is on reconsideration of ought to pass.**

**A roll call was requested by Senator F. King.**

**Seconded by Senator Francoeur.**

**The following Senators voted Yes: McCarley, Trombly, Disnard, Fernald, Pignatelli, Francoeur, Larsen, Brown, J. King, D'Allesandro, Wheeler, Hollingworth, Cohen.**

**The following Senators voted No: F. King, Gordon, Johnson, Fraser, Below, Roberge, Squires, Krueger, Russman, Klemm.**

**Yeas: 13 - Nays: 10**

**Adopted.**

**Senator Wheeler moved inexpedient to legislate.**

Senator Gordon moved to have **SB 194-FN-A**, dedicating certain sums in the moose management fund for the payment for damage done by moose to certain trees, laid on the table.

**A division vote was requested.**

**Yeas: 13 - Nays: 10**

**Adopted.**

### **LAID ON THE TABLE**

**SB 194-FN-A**, dedicating certain sums in the moose management fund for the payment for damage done by moose to certain trees.

### **TAKEN OFF THE TABLE**

Senator Trombly moved to take **SB 82**, relative to the termination of employees, off the table.

**Adopted.**

**SB 82**, relative to the termination of employees. Ought to pass.

**Question is on the motion of ought to pass.**

**SENATOR GORDON:** Senator Trombly, on the bill as it currently stands, refers to any employee who is informed that they are being terminated should be entitled to a letter in writing. I guess that the concern that I had was the nature of employer and employee relationship and the fact that I might hire a babysitter to come in and baby-sit kids. And if I read this correctly, if I decide to tell the babysitter that I don't need their services anymore, I am going to have to provide that babysitter with a reason why I am not hiring them anymore. Is that correct?

**SENATOR TROMBLY:** Senator Gordon, I think that you have made a wonderful point being the competent lawyer that you are, are talking about probably the most extreme case possible, the most unlikely thing to happen...seriously, Senator Gordon, no. I will tell you why. If you hire your neighbor next door to mow your lawn, he mows and boom, you're done. You just don't hire him again. The babysitter, you come home and she has eaten your chocolate cake that you have been waiting to eat all night at the movies. You come home and she or he has eaten it, in my case, you just don't hire me again. So there is no ongoing contractual relationship there. Those are obviously hiring for a specific period of time. These clearly...another answer to your question to, Senator Gordon, is that if you look at the reference where this fits into the RSA's 275, I believe, I am not going to state this as a fact, but I believe that is in the section of law that talks about the type of employment. Of course we are an at will state anyway.

**SENATOR GORDON:** By using the analysis that you just have, if I have a secretary at my law office and she is an at will employee, using your analysis, I would just say "I don't need you anymore tomorrow."

**SENATOR TROMBLY:** Right.

**SENATOR GORDON:** And under your analysis I don't have to give her a reason why I am firing her?

**SENATOR TROMBLY:** No. I think that there is a difference between a secretary in your office and someone who is employed to take care of your children. If it is a long term employment where they go there each week and you say I am not going to bring the kids back, I think that is a different type of employment than someone who is employed in your law office. Clearly there is. I think that there is a huge distinction there.

**SENATOR GORDON:** Would you have an objection if this were amended to a certain level so it was employers with 25 employees or more so that...

SENATOR TROMBLY: I would have an objection and I will tell you why. The bill is aimed to help the employee and if we get to Senator King's amendment, I think that Senator King's amendment provides a time frame after which the employer no longer has to provide this. Remember the debate, Senator Gordon and the testimony, you are not on the committee, but the testimony was for those employees who are trying to find employment that go back...I think that Senator King had a constituent that testified that they could not get the reason for the termination of their employment from the prior employer. All this seems to require is that the employer state the reason for the termination. The amendment will require the employee to make that request within a reasonable period of time. There is no form, there is no anything other than a statement as to why they were terminated.

SENATOR GORDON: Thank you.

SENATOR FRASER: Senator Trombly, now I am confused. Wouldn't the babysitter be an independent contractor?

SENATOR TROMBLY: They could be. I don't want to get bogged down in the babysitter situation because clearly to say that if you hire a babysitter for Saturday night and then you don't call them back ever again, there is no terminal point in that.

SENATOR FRASER: Thank you.

SENATOR RUSSMAN: The issue with the babysitters has to do with quarterlies and also withholding tax. If you pay more than required amount in a quarter, you are supposed to withhold and pay a withholding tax, and that is why so many people that have gone for congressional appointments have had trouble because their housekeepers and etceteras, they pay them with a check or cash and whatever and they didn't do it. But I think that is the distinction, so it wouldn't really...babysitters are clearly not independent contractors, otherwise your kids are going to be in trouble. I think that is the issue in terms of where the debate is on whether or not you are an employee or not.

SENATOR F. KING: Would the sponsor entertain a motion that would stipulate that the employer had to have been an employee for let's say six months? I see what you are after, and I believe that is probably well if it is a long-term employee, but I just see a lot of problems for employers. If they hire someone and they have them for a short period of time because they don't work out and they terminate them, they have to go through this whole process. So would after a probationary period, they could be entitled to this?

SENATOR J. KING: That sounds good, Senator King.

Senator J. King moved to have **SB 82**, relative to the termination of employees, laid on the table.

**Adopted.**

### **LAID ON THE TABLE**

**SB 82**, relative to the termination of employees.

### **ANNOUNCEMENTS**

### **RESOLUTION**

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time.

**Adopted.**



**RESOLUTION**

Senator Cohen moved that the Senate be in recess for the purpose of House Messages, introduction of bills, Enrolled Bills Reports and amendments and that when we adjourn we adjourn until Thursday, May 6, 1999 at 10:00 a.m.

**Adopted.**

**LATE SESSION****Third Reading and Final Passage**

**SB 29-L**, relative to the proper sheltering of dogs.

**SB 59-L**, relative to bonding of animal owners convicted of animal cruelty.

**HB 78**, relative to the counting of votes when the moderator is disqualified.

**SB 163**, establishing a commission to study methods for reducing violent incidents involving children and guns.

**SB 188-L**, allowing school districts operating under the official ballot form of meeting to have more than one special meeting per year through court petition on an appropriation question or issue.

**HB 203**, making impaired boating laws consistent with driving while intoxicated laws.

**HB 206**, relative to restrooms in restaurants.

**HB 214**, changing the membership of and extending the reporting date for the committee to study women's health care.

**HB 268-L**, relative to the adoption and rescission of the official ballot form of meeting.

**HB 302**, relative to paint ball guns.

**HB 327-L**, allowing municipal governing bodies to enter into lease agreements for equipment.

**HB 365**, establishing a committee to study the current practice of posting roads and its effect on the economy.

**HB 383**, relative to the authority of the department of environmental services to assign air pollution allowances and credits.

**HB 403**, relative to speed limits on Turtle Town Pond in Concord.

**HB 447**, repealing the laws prohibiting certain promotional games.

**HB 515**, extending the indemnification of persons providing clinical services to the department of health and human services.

**HB 558-FN**, relative to solid waste management.

**HB 710-FN**, relative to expanding the availability of lifetime licenses for hunting and fishing.

**HCR 4**, urging the U.S. Secretary of Transportation to include U.S. Route 2 as a border corridor highway.

**In recess.**

**Out of Recess.**

**HOUSE MESSAGE**

The House of Representatives has adopted the recommendation of the Committee of Conference to which was referred the following entitled House Bill:

**HB 117-FN-A-L**, an act establishing a uniform education property tax and a utility property tax, increasing the business profit and real estate transfer taxes, and including other sources of revenue to provide funding for an adequate public education and making an appropriation therefor.

### REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill:

**HB 117-FN-A-L**, an act establishing a uniform education property tax and a utility property tax, increasing the business profit and real estate transfer taxes, and including other sources of revenue to provide funding for an adequate public education and making an appropriation therefor.

Senator D'Allesandro moved adoption.

**Adopted.**

**In recess.**

**Out of Recess.**

### HOUSE MESSAGE

The House of Representatives has passed Bills and Resolutions with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 55-FN-A**, setting the rate for the medicaid enhancement tax for the biennium ending June 30, 2001.

**HB 251**, relative to official ballot procedures.

**HB 333**, relative to contracts between participating providers and managed care entities.

**HB 369**, establishing a committee on educational programs on tobacco use for minors.

**HB 408**, relative to drug formularies under managed care entities.

**HB 469**, raising the medical payments coverage under automobile insurance policies.

**HB 473**, establishing a committee to study the non-group health insurance market.

**HB 488**, relative to the definition of a developmentally delayed child in the provision of special education services.

**HB 532**, establishing a commission to study early childhood education.

**HB 559-FN-A**, authorizing vanity plates or decals for OHRV registrations.

**HB 561-FN**, reducing lab analysis fees of chemical analyses of water.

**HB 562**, relative to the date of decision for appeals of zoning matters.

**HB 581-L**, relative to deposits on utility meters.

**HB 639-FN**, relative to motor vehicles registration fees for antique motor vehicles and motorcycles.

**HB 689-FN**, establishing a committee to study campaign contributions and expenditures.

**HB 727-FN**, establishing a committee to study the problems and possible regulation of outdoor lighting.

**HCR 5**, encouraging New Hampshire Public Radio to extend its broadcast signal to northern areas of New Hampshire.

**HCR 12**, urging the United States Congress to enact legislation which prohibits the federal government from recouping state tobacco settlement funds.

**HJR 2**, urging that federal air pollution programs not punish early adopters of air pollution control technology.

**HJR 3**, urging ISO-New England to adopt policies furthering the state's interest in electric utility restructuring.

**HJR 9**, urging the United States Congress and federal Environmental Protection Agency to eliminate federal requirements for oxygenate additives for gasoline.

**HB 225**, relative to the definitions of the terms "farm," "agriculture," and "farming."

**HB 265**, relative to the student trustees on the university system of New Hampshire board of trustees.

**HB 322**, relative to funds provided by a mortgagee at real estate closings.

**HB 325**, prohibiting "cramming" in telecommunications billing.

**HB 341**, relative to the process for nonrenewal of teacher contracts.

**HB 379**, setting up a study committee to study issues pertaining to the Sullivan county regional refuse disposal district.

**HB 410**, relative to the enforcement authority of the department of environmental services.

**HB 421**, relative to the penalty provisions for the law regarding control of marine pollution, exotic aquatic weeds, and other aquatic growth.

**HB 438**, relative to certain changes to the membership of the advisory committee on child care.

**HB 463-L**, relative to the local regulation of junk yards and altering the definition of federal aid primary system for purposes of the laws regarding highway regulations, protection and control regulations.

**HB 477-FN**, changing certain requirements for temporary plates on motor vehicles.

**HB 535**, establishing a committee to study the department of resources and economic development.

**HB 538**, establishing a committee to study the new construction and repair of New Hampshire commemorative monuments at certain Civil War battle sites.

**HB 650**, establishing a committee to study the structure of alcohol and drug abuse prevention services.

**HB 736**, ratifying the 1999 Allentown annual town meeting.

### INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 55-HJR 9 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

**Adopted.**



**First and Second Reading and Referral**

**HB 55-FN-A**, setting the rate for the medicaid enhancement tax for the biennium ending June 30, 2001. **Finance**

**HB 251**, relative to official ballot procedures. **Public Affairs**

**HB 333**, relative to contracts between participating providers and managed care entities. **Insurance**

**HB 369**, establishing a committee on educational programs on tobacco use for minors. **Public Institutions, Health and Human Services**

**HB 408**, relative to drug formularies under managed care entities. **Public Institutions, Health and Human Services**

**HB 469**, raising the medical payments coverage under automobile insurance policies. **Insurance**

**HB 473**, establishing a committee to study the non-group health insurance market. **Insurance**

**HB 488**, relative to the definition of a developmentally delayed child in the provision of special education services. **Education**

**HB 532**, establishing a commission to study early childhood education. **Education**

**HB 559-FN-A1**, authorizing vanity plates or decals for OHRV registrations. **Transportation**

**HB 561-FN**, reducing lab analysis fees of chemical analyses of water. **Environment**

**HB 562**, relative to the date of decision for appeals of zoning matters. **Public Affairs**

**HB 581-L**, relative to deposits on utility meters. **Executive Departments and Administration**

**HB 639-FN**, relative to motor vehicles registration fees for antique motor vehicles and motorcycles. **Transportation**

**HB 689-FN**, establishing a committee to study campaign contributions and expenditures. **Public Affairs**

**HB 727-FN**, establishing a committee to study the problems and possible regulation of outdoor lighting. **Environment**

**HCR 5**, encouraging New Hampshire Public Radio to extend its broadcast signal to northern areas of New Hampshire. **Internal Affairs**

**HCR 12**, urging the United States Congress to enact legislation which prohibits the federal government from recouping state tobacco settlement funds. **Internal Affairs**

**HJR 2**, urging that federal air pollution programs not punish early adopters of air pollution control technology. **Environment**

**HJR 3**, urging ISO-New England to adopt policies furthering the state's interest in electric utility restructuring. **Energy and Economic Development**

**HJR 9**, urging the United States Congress and federal Environmental Protection Agency to eliminate federal requirements for oxygenate additives for gasoline. **Environment**

**HB 225**, relative to the definitions of the terms "farm," "agriculture," and "farming." **Wildlife and Recreation**

**HB 265**, relative to the student trustees on the university system of New Hampshire board of trustees. **Education**

**HB 322**, relative to funds provided by a mortgagee at real estate closings. **Banks**

**HB 325**, prohibiting "cramming" in telecommunications billing. **Executive Departments and Administration**

**HB 341**, relative to the process for nonrenewal of teacher contracts. **Education**

**HB 379**, setting up a study committee to study issues pertaining to the Sullivan county regional refuse disposal district. **Environment**

**HB 410**, relative to the enforcement authority of the department of environmental services. **Environment**

**HB 421**, relative to the penalty provisions for the law regarding control of marine pollution, exotic aquatic weeds, and other aquatic growth. **Environment**

**HB 438**, relative to certain changes to the membership of the advisory committee on child care. **Public Institutions, Health and Human Services**

**HB 463-L**, relative to the local regulation of junk yards and altering the definition of federal aid primary system for purposes of the laws regarding highway regulations, protection and control regulations. **Transportation**

**HB 477-FN**, changing certain requirements for temporary plates on motor vehicles. **Transportation**

**HB 535**, establishing a committee to study the department of resources and economic development. **Energy and Economic Development**

**HB 538**, establishing a committee to study the new construction and repair of New Hampshire commemorative monuments at certain Civil War battle sites. **Internal Affairs**

**HB 650**, establishing a committee to study the structure of alcohol and drug abuse prevention services. **Public Institutions, Health and Human Services**

**HB 736**, ratifying the 1999 Allenstown annual town meeting. **Public Affairs**

### LATE SESSION

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, and that when we adjourn we adjourn until Thursday, May 6, 1999 at 10:00 a.m.

**Adopted.**

**Adjournment.**

*May 6, 1999*

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by Rev. David P. Jones, Senate Chaplain.

Hydrogen filled dirigibles seemed like a good idea at the time. They succeeded in carrying passages from place to place in a new but very eco-

nomical way. They were quiet, they were majestic and they were steady, but cautious in their pace. They must have been beautiful to behold until May 6, 1937 when a tiny spark, maybe from lightning, perhaps from static electricity, took the awesome bag full of hydrogen, which was the Hindenburg and turned it into a fireball. As you turn your attention now, to the crafting of a budget for the next biennium, watch out for anything that seems like a good idea at the time, but is in fact as volatile as is hydrogen, because there will always be our atmosphere, lightning and static electricity. Let us pray:

*Divine navigator pilot, the process of this Senate's work, give them your blueprints that they may construct for us a craft of majestic vision, effective function and safe material that we may not by their efforts and end up getting blown apart, but rather may end up getting blown together.* Amen

Senator J. King led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS SUSPENSION OF THE RULES

Senator J. King moved that the Rules of the Senate be so far suspended to allow a committee report not advertised in the Senate Calendar.

**Adopted by the necessary 2/3 votes.**

**HB 67**, relative to termination of parental rights upon a finding of either child abuse or commission of certain criminal offenses. Judiciary Committee. Ought to pass. Senator Pignatelli for the committee. Senator Pignatelli offered a floor amendment.

**1999-1095s**

**04/01**

### Floor Amendment to HB 67

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to termination of parental rights upon a finding of child abuse.

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose; Intent. The purpose of this amendment to RSA 170-C is to bring New Hampshire into compliance with the Adoption and Safe Families Act of 1997 that became effective on November 11, 1997. The Adoption and Safe Families Act is designed and intended to reform the current child welfare system and to balance the safety, permanency and well being of children in foster care.

2 Grounds for Termination of Parent-Child Relationship. Amend RSA 170-C:5, III to read as follows:

III. The parents, subsequent to a finding of child neglect or abuse under RSA 169-C, have failed to correct the conditions leading to such a finding within ~~[18]~~ **12** months of the finding despite reasonable efforts under the direction of the district court to rectify the conditions.

3 New Section; Petition for Termination of Parental Rights Required. Amend RSA 170-C by inserting after section 4 the following new section:

170-C:4-a Petition for Termination of Parental Rights Required. The state, through an authorized agency, or if required by a court of competent jurisdiction, shall file a petition for termination of parental rights or guardianship, or if such a petition has been filed by another party, the



state shall seek to be joined as a party to such petition, in all cases where a child has been in foster care, under the responsibility of the state, for 12 of the most recent 22 months.

4 Effective Date. This act shall take effect upon its passage.

**1999-1095s**

### AMENDED ANALYSIS

This bill decreases from 18 months to 12 months the time allowed for a parent, subsequent to a finding of child abuse, to correct the situation leading to that finding, and requires that the state initiate or join a petition for termination of parental rights where a child has been in foster care under the responsibility of the state for 12 of the most recent 22 months.

SENATOR PIGNATELLI: I rise to recommend that the Senate pass HB 67 as amended. The purpose of HB 67 is to provide further protection for the unfortunate children in this state who have suffered severe abuse and neglect. This bill also brings the state of New Hampshire into minimum compliance with the Adoption and Safe Families Act, which was enacted by the United States Congress with bipartisan support on November 11, 1997. I will address first, the primary purpose of this bill, which is the well being of children who are at risk. The Senate Judiciary Committee heard testimony that, following a finding of abuse and neglect by a district court, which finding results in the removal of the child from the parent's home into the care of the state. It took an average of three years and four months before a final decision was made whether there would be a termination of parental rights. This is too long a time to leave a child with uncertainty. Supporters of this bill testified that most foster children are able to return to their birth parents once their parents have acted to correct the reasons for the original removal of the child. This bill addresses the children who unfortunately, will most likely not be able to return to their homes. If enacted, this bill will require timely action to provide permanent homes for abused and neglected children. In cases of abuse and neglect that are so severe as to cause the removal of the child into foster care, this bill requires the parents to correct the conditions leading to the finding of abuse and neglect within 12 months rather than 18 months, as is currently the case. If the parents do not, and the child therefore remains in foster care for 12 of the most recent 22 months, this bill provides that the state must file a petition for termination of parental rights. This bill addresses the children who will not be able to return to their homes and it acts to provide permanency and security in their lives sooner rather than later. Supporters of the bill testified that this legislation will act to make safety and the protection of the child the most urgent concern. It will also act to bring the state of New Hampshire into minimum requirement of the Adoption and Safe Families Act or ASFA. The state must be in compliance by May 31 of this year. The state receives approximately \$16 million for services for childcare from the federal government. This funding is tied to our compliance with this ASFA. Supporters of the bill testified that funding would be withheld until New Hampshire is in compliance. Because of the urgency of this bill, I would ask that it become effective upon passage so that the Department of Health and Human Services can get the funding that it needs. Representatives from the Department of Health and Human Services, the Probate Court, Child and Family Services, CASA of New Hampshire and the New Hampshire Court Improvement Project supported this bill. I would ask that you also act to protect the safety,

security and well being of these children at risk and to preserve much needed funding for those who act to protect the interest of these children. I urge you to vote this bill as ought to pass as amended.

**Floor Amendment adopted.**

**Ordered to third reading.**

### **COMMITTEE REPORTS**

**HB 442**, relative to charitable gift annuities. Banks Committee. Vote 3-0. Ought to pass with amendment, Senator Fernald for the committee.

**1999-1026s**

**01/09**

#### **Amendment to HB 442**

Amend RSA 403-E:4 as inserted by section 1 of the bill by replacing it with the following:

403-E:4 Failure to Comply. The failure of a charitable organization to comply with the requirements imposed under RSA 403-E:3 of this chapter shall not prevent a charitable gift annuity that otherwise meets the requirements of this chapter from constituting a qualified charitable gift annuity. The director shall enforce performance of RSA 403-E:3 by sending a letter by certified mail, return receipt requested, demanding that the charitable organization comply with the requirements of RSA 403-E:3. The director may fine the charitable organization in an amount not to exceed \$1,000 per qualified charitable gift annuity agreement issued until such time as the charitable organization complies with RSA 403-E:3.

SENATOR FERNALD: In a typical annuity contract, a person pays a chunk of money to an insurance company and they get a return of contract that guarantees payments either for a particular period of time or until the end of the person's life. Charities sometimes do this as well. They take a contribution, if you will, and they enter into a contract agreeing to make payments over a certain period of time. A portion of the money that they receive is treated as a gift and the rest of it is used to fund the annuity. The insurance companies that issue annuities are subject to all kinds of regulations, but charities that issue annuities are subject to none. The Insurance Department was getting on the case of the charities that were doing this seeking to subject them to the same regulations as insurance companies. This bill was designed to address this situation. It subjects the charities to some regulation, but not to the same regulation as the insurance industry that is issuing annuities. Specifically what the bill says is that if a charity receives money as part of an annuity deal, that they will hold onto, in their portfolio, all of the money that they received until the annuity contract has been completely fulfilled, so that there is protection there for the person receiving the annuity payments that they will in fact get what they bargained for. I hope that you will support the committee and its amendment on this bill. Thank you.

**Amendment adopted.**

**Ordered to third reading.**

**SB 230**, relative to interstate school districts. Education Committee. Vote 6-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: Senate Bill 230 was filed at the request of the town of Orford. Three communities in Vermont have agreed with the town of Orford, New Hampshire to create the first interstate cooperative K-12 school district in the country. This will be known as the Rivendell School

District. Senate Bill 230 as drafted will enable the creation of interstate cooperative school districts including those which may be formed in the future. Senate Bill 230 addresses the certification standards for professional personnel, the state assessment program, and the approval of the high school by the state board of education. Our current interstate compact law is 30 years old. At the time that it was written, there were no special education laws or collective bargaining provisions. Senate Bill 230 is necessary to update these antiquated provisions. The Senate Education Committee recommends that SB 230 be voted ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 402**, establishing a committee to study methods to promote the use of renewable energy sources. Energy and Economic Development Committee. Vote 3-0. Ought to Pass, Senator Roberge for the committee.

SENATOR ROBERGE: Mr. President and members of the Senate, this bill effectively establishes a study committee to consider ways of promoting greater use of renewable energy in the context of a restructured electric power industry. The final statewide electric restructuring plan issued by the Public Utilities Commission in 1997 phased out mandatory energy efficiency programs also called Demand, side management administered by the utilities. However, there are obvious benefits to public health, environment and quality, energy efficiency, making use of renewable energy resources. Other states are in the process of incorporating renewable energy strategies into restructured energy markets. The committee believes that a study is appropriate and timely initiative and unanimously recommends ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 435**, relative to disclosure by sellers of consumer goods and services. Energy and Economic Development Committee. Vote 6-0. Ought to Pass, Senator Below for the committee.

SENATOR BELOW: This is a consumer protection bill. This bill requires firms engaged in "home solicitation sales" of goods or services to disclose a telephone number for customer inquiries and complaints. Firms are already required to disclose the legal name of the business and a street address from which they do business in advertising, solicitations and promotional materials. The bill simply adds a telephone number to the required disclosures. The committee unanimously recommends ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 671**, adding a member to the council on resources and development. Energy and Economic Development Committee. Vote 3-0. Ought to Pass, Senator Disnard for the committee.

SENATOR DISNARD: This bill adds the commissioner of cultural resources to the council on Resources and Development. The participation of the commissioner responsible for protecting the state's historical and cultural resources is especially appropriate in this instance. The committee unanimously recommends ought to pass.

**Adopted.**

**Ordered to third reading.**



**HB 672-FN-A-L**, relative to creating a master plan for Hampton Beach and Hampton State park to deal with growth. Energy and Economic Development Committee. Vote 6-0. Ought to Pass, Senator Hollingworth for the committee.

**SENATOR HOLLINGWORTH:** This bill requires the commissioner of resources and economic development to prepare a master plan for the seacoast parks. Traditionally, the seacoast has been a seasonal destination for visitors and tourists and for potentially expanding and extending the season has not been tapped. The bill would require the plan to provide a vision for the future of Hampton Beach, which should consider a year-round attraction or facility. In the past, DRED has contracted with master plans for Odiorne Point and Cannon Mountain. The original bill appropriate \$50,000 to DRED, the same amount of money spent on the other master plans, but it has been removed from the bill by the House. The House believed and stated to the members, that the whole delegation from the seacoast, that money was tight and therefore they couldn't afford the \$50,000. Fortunately, commissioner Bald believes that he can receive the money from the cultural and scenic byways fund and also the coastal zone management fund. So I believe that we will be able to follow ahead with the study and the master plan. I would like to do a little show and tell if I could right now. I don't have the occasion to show this off much. If I could get the help of Senator D'Allesandro and Senator Klemm, I would like to show you what was given to the state of New Hampshire in 1993. This is an antique map of Hampton Beach. It was given to the state of New Hampshire in 1993 by the town. All that they asked of the state was that it kept open..and this is the Atlantic Ocean as you can see down here, starting all the way over there. Eighteen miles of coastline. You were given almost all of it. There is a little segment that is still kept by the town, but the rest of it belongs to the state, and we gave it to you with great pride for you to use for the citizens of the state of New Hampshire and to keep it open and free. So I think that it is an investment in your property, and I hope that you will make sure that whatever we do with it in the future, that we will always take pride in it. The committee would ask ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 686-FN**, defining the state heritage collections committee's responsibilities and the process for acquiring or disposing of items and collections. Energy and Economic Development Committee. Vote 6-0. Ought to Pass, Senator Fraser for the committee.

**SENATOR FRASER:** Mr. President, this bill defines the responsibilities of the state Heritage Collections Committee for disposing of any object of historical, cultural or artistic value. The state curator is in the process of taking inventory of objects owned by the state. Now when the state disposes of property, everything is sold at auctions held at White Farm. This process does not ensure that objects of historical, cultural and artistic value find their proper market or command their appropriate value. Those likely interested in paying top dollar for furniture or paintings. This bill authorizes the committee to approve or disapprove of plans to dispose of such object subject only to the conditions that they must be sold through publicly advertised sales or auctions. The committee was unanimous in recommending this bill as ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 90**, establishing a committee to study and investigate the needs for small business loans to pay for technical improvements for persons working at home. Energy and Economic Development Committee. Vote 7-0. Ought to Pass, Senator F. King for the committee.

**SENATOR F. KING:** Today's economy with computers being so prevalent in society, an awful lot of individuals are finding that they are able to work in their own homes and run businesses successfully all over the country, including some of the more rural areas in the country. This bill will allow the establishment of a committee of three members of the Senate and three members of the House to investigate and study the needs for small business loans to help these individuals start up these home businesses. The committee recommended this pass 7-0.

**Adopted.**

**Ordered to third reading.**

**HB 230**, clarifying the waste reduction goals for the state of New Hampshire. Environment Committee. Vote 6-0. Ought to Pass, Senator Wheeler for the committee.

**SENATOR WHEELER:** Mr. President, I rise in support of HB 230. This bill rewrites the statement of intent to clarify the original objective of the statute. Emphasis is placed upon a 40 percent or greater per capita, per annum weight diversion by the year 2000 and yearly thereafter rather than benchmarking the goal to 1990. The Department of Environmental Services testified that the proposed change makes the 40 percent goal more direct and less subject to past estimates. The current target was established to be notional rather analytical and has been found to have various shortcomings. This bill also deletes the language addressing incinerator ash and existing waste reduction efforts in order to further emphasize the goal of maintaining a 40 percent of recycling and diversion on a yearly basis, whether it is measured in 1999 or 2005. The intent of the bill is to achieve the 40 percent yearly diversion regardless of economic conditions. Diversion of waste provides a better measure of what is occurring in solid waste management today and in the future. All the testimony was in favor of this bill. It is a request of the DES. I urge you to vote ought to pass on HB 230.

**Adopted.**

**Ordered to third reading.**

**HB 426**, relative to clean indoor air in state buildings. Environment Committee. Vote 6-0. Ought to Pass, Senator Russman for the committee.

**SENATOR RUSSMAN:** Right now the standards for this subject are a bit unclear and some ambiguous language in the current statute. This will also make it apply to retail space in addition to office space. Also it redefines the definition of building renovations to mean the costs of renovation must be at 50 percent or more of the replacement cost to the building. This was a result of a six-month study in which the Department of Administrative Services, Transportation, Education, Corrections, Liquor Commission and the State Employee's Association all had input into the bill, so we would ask that you pass this bill.

**Adopted.**

**Ordered to third reading.**

**HB 556-FN**, relative to transporting hazardous waste. Environment Committee. Vote 6-0. Ought to Pass, Senator Pignatelli for the committee.

SENATOR PIGNATELLI: I rise in support of HB 556. The Department of Environmental Services believes that our current law is not sufficiently protective to prevent bad actors in the transportation industry from registering in our state to transport hazardous waste; therefore, DES recommends adoption of this bill to strengthen its legal authority to carefully review hazardous waste transporters seeking to do business in New Hampshire. The proposed legislation and associated rulemaking will provide the appropriate framework to issue, deny, modify, suspend or to revoke registrations. The goal of DES is to support legitimate transportation of hazardous waste and to deny only those transporters who flaunt the rules that are designed to be highly protective of human health and the environment. The second issue addressed by this bill relates to laws allowing DES to take immediate action in response to imminent hazardous resulting from the generation, storage, treatment or disposal of hazardous waste. This bill would add transportation to this list of activities. This is an important addition as a recent study by the New Hampshire Emergency Response Commission showed that over one-third of all hazardous material emergencies reported, were transportation related; however, lacking the authority to direct an immediate action in hazardous materials emergencies could seriously deter the state's ability to act expeditiously to protect human health and the environment. The New Hampshire Motor Transport Association and the Department of Safety support this bill, therefore, I urge you to vote HB 566 as ought to pass. Thank you.

SENATOR DISNARD: I rise in strong support of the passage of this bill. Many of you may realize the situation over in the western part of the state in Sullivan County where there is an ash land fill. The directors of the ash land fill compact with New Hampshire and Vermont by law are a municipality. They have the same rights as a municipality and they are threatening to sell a portion of 80 acres where the ash land fill is now located to a possibility of a waste organization from Massachusetts. They have indicated, in public sessions, that a minimum of 400 tons of trash into the state from out of the state would be coming in. Right now there are no testing provisions to determine what is in that waste or what medical wastes might be in it or other hazardous waste. I strongly urge the Senate to pass this bill.

**Adopted.**

**Ordered to third reading.**

**HB 557-FN**, relative to hazardous waste permitting and container identification. Environment Committee. Vote 6-0. Ought to Pass, Senator Russman for the committee.

SENATOR RUSSMAN: This bill has to do with hazardous waste permitting and container identification. Basically it allows an easing or more flexibility in the rules that DES provides. For example, if an electrical supply house agrees to take back thermostats that have mercury in them, right now there are rigorous rules and things that they have to meet, and so if they want to recycle these goods; it would make sense to ease these rules so that they can handle them in a much more rapid and easier manner and less costly manner, because some of the clearing houses and shops don't want to be involved with it because of the rigorous rules. This would go a long way towards dealing with some of these lower risks hazardous materials such as florescent tubes and mercury thermostats and things of that nature. We would urge passage of the bill.

**Adopted.**

**Ordered to third reading.**



**HB 592**, creating a study committee regarding requirements for and usage of methyl t-butyl ether. Environment Committee. Vote 6-0. Ought to Pass, Senator Russman for the committee.

SENATOR RUSSMAN: This sets up a study committee regarding the requirements for the use of MTBE, which is, as we all know, fairly controversial in terms about our water supplies and things of that nature. The House has passed this over and we think that it is another step towards how to deal with this particular product, and we would urge passage of this bill.

**Adopted.**

**Ordered to third reading.**

**HB 530**, establishing a committee to review the policies and procedures of the joint health council. Executive Departments and Administration Committee. Vote 5-0. Ought to Pass, Senator Cohen for the committee.

SENATOR COHEN: The Joint Council was established to determine what drugs advanced registered nurse practitioners would be allowed to dispense to patients. The council is intended to facilitate safe prescriptive practice for advance registered nurse practitioners. This committee will study the joint health council to make sure that the intended purpose of the council is currently being achieved, and that there be no necessary delays in approval of prescription drugs, and that patients get the best possible care and treatment. The committee recommends this bill as ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 638-FN**, authorizing a limited license for certain travel agents. Executive Departments and Administration Committee. Vote 4-0. Ought to Pass, Senator Larsen for the committee.

SENATOR LARSEN: Travel agents currently offer temporary travel insurance to their customers. This insurance covers such things as lost or damaged luggage and cancellation insurance. Because of the interpretation by the Insurance commissioner's office, and without this legislation, travel agents have been notified that they will be required to take and pass a regular insurance licensing exam in order to offer their temporary travel insurance policy. The insurance licensure exam includes a broad array of subjects that do not apply to travel agents business practices. House Bill 638 creates a special licensing procedure in the office of the insurance commissioner. The travel agents would need to register with the commissioner for consumer protection purposes, but would not be required to take the full insurance licensing exam. The committee recommends this bill as ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 83**, relative to the regulation of the practice of veterinary medicine. Executive Departments and Administration Committee. Vote 4-0. Rereferred to Committee, Senator Brown for the committee.

**Senator Cohen moved to recommit.**

**Adopted.**

**SB 83** is recommitted to the Executive Departments and Administration Committee.

**HB 620-FN**, relative to election of vested deferred retirement status for inactive members of the retirement system. Insurance Committee. Vote 8-0. Ought to Pass, Senator J. King for the committee.

**SENATOR J. KING:** House Bill 620 deals with what happens when a member of a state retirement system who is fully vested and leaves state employment. Currently employees who leave the system, but still have money in the retirement plan, get an immediate disbursement after 6 years, unless they have elected to keep their money in the system. The disbursement tax consequence of the result with large sums became an issue. House Bill 620 reverses the current system by ruling that the person's money gets left in the retirement system unless the person specifically request that it be deferred. That way, the former retirement system member takes the tax consequences that can accompany early withdrawal. They can still get the money at any time, but only by request. The New Hampshire Retirement System supports this bill. The Insurance Committee unanimously voted it ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 634-FN**, eliminating the requirement that retirement system disability recipients notify the board of trustees of unreduced social security disability benefits. Insurance Committee. Vote 8-0. Ought to Pass, Senator J. King for the committee.

**SENATOR J. KING:** House Bill 634 removes from statute unnecessary language regarding the offsetting impact of social security benefits on the Retirement System's disability payments. The New Hampshire Retirement System no longer reduces disability payments because the person gets social security payments, but the statute was never changed to remove the language. This bill will have no fiscal impact and it is supported by the New Hampshire Retirement System. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 15-FN-A**, creating a position within the insurance department. Insurance Committee. Vote 8-0. Ought to pass with amendment, Senator Squires for the committee.

**1999-1064s**

**01/09**

### **Amendment to SB 15-FN-A**

Amend the title of the bill by replacing it with the following:

**AN ACT** creating a position within the insurance department and making an appropriation therefor.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; New Position; Long-Term Care Specialist. Amend RSA 126-L by inserting after section 5 the following new section:

126-L:5-a Long-Term Care Specialist. There is hereby established a long-term care specialist within the institute. The long-term care specialist shall be hired by the board. The long-term care specialist shall serve as the executive director of the institute and as a liaison between the institute and the insurance department and shall perform the duties of the institute as provided in RSA 126-L:5.

2 Applicability. The long-term care specialist position, established in section 1 of this act, shall not be a state employee position.

3 Appropriation. The sum of \$49,592 plus a sum equal to 25 percent of the state employee fringe benefits for fiscal year ending June 30, 2000, and the sum of \$49,592 plus a sum equal to 25 percent of the state employee fringe benefits for fiscal year ending June 30, 2001, are hereby appropriated to the long-term care institute established in RSA 126-L:2 for the purposes of paying the annual salary of the position created in section 1 of this act. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

4 Repeal. RSA 126:5-a, relative to a long-term care specialist, is hereby repealed.

5 Effective Date.

I. Section 4 of this act shall take effect July 1, 2001.

II. The remainder of this act shall take effect July 1, 1999.

**1999-1064s**

### AMENDED ANALYSIS

This bill creates a 2-year position of long-term care specialist to perform the duties of the long-term care institute. The bill makes an appropriation for the purposes of paying the annual salary of the long-term care specialist.

SENATOR SQUIRES: A few years ago the legislature created this entity of a long term care institute, but there is no staff. The idea is to promote the acquisition of long term care insurance, particularly for younger people. The bill, as it originally came to the committee, put an individual on the insurance department, but funded it out of a payment extracted from long term care insurers. This created some upset. It has been amended, and it is just going in as a general appropriation and no one is under any misconception about what is likely to occur; nevertheless, it does not contain a funding mechanism that involves insurance carriers in any way, shape or manner. I ask that you pass this so that we may send it to Finance and see what happens. Thank you.

**Amendment adopted.**

**Referred to the Finance Committee (Rule #24).**

**SB 32**, relative to an employer exemption under the unemployment compensation laws. Insurance Committee. Vote 8-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: Mr. President, sometimes it is very difficult to explain the reason why a state agency of government does the things the way that they do. In this case, the Department of Employment Security. Mr. President, I am going to try to relate to our colleagues in the Senate as briefly as possible the background of SB 32, and why the Insurance Committee was unanimous in reporting this bill out as ought to pass. Two women from Massachusetts, a Mrs. Wagner and a Mrs. Fraser, no relation, are in the business of providing people to stores for the purpose of demonstrating and offering samples to customers, conducting store hours to mystery shopping. The folks who do the sampling and demonstration are free to accept or to decline an assignment. The arrangement between these people and the companies that they contract with for their services are of a fundamentally different nature than traditional employment. These individuals determine their own schedule and availability and enjoy broad latitude in the performance of assign-



ments. For instance, they provide their own costumes, their own hot plates or whatever equipment they may need. Further, they receive a 1099 rather than a W2 form for work performed and the IRS has always considered them as independent contractors. All individuals who testified at the hearing wanted to be noted that they considered themselves independent contractors. For instance, they could go to Florida for the weekend if they so desired and in fact, some of them do. One further note, they are neither hired or fired, they can just either accept or decline an assignment. Why SB 32 is before us today is that one of the demonstrators made a mistake in that she made a claim for unemployment and the name of Wagner, Fraser rather than her full time employer. Low and behold based on a preliminary investigation, the employment security found her to be an employee, while Mrs. Wagner and Mrs. Fraser...and that the Wagner/ Fraser was subject to unemployment. Testimony offered by the representative of the Division of Employment Security went something like this; He felt that the decision by a field officer was premature and that the ABC test was not applied. I will report some of the things that he said. First of all, he did not disagree with any of the testimony offered by Mrs. Wagner, and if there was an appeal process underway and if the Fraser/Wagner group does sustain the burden of proof and meet the so-called ABC test, that they will not be subject to unemployment. It is interesting to note that the representative of the employment security felt that based on a Maine case and a prior case here in New Hampshire, that they would in fact, that the Fraser/Wagner group would in fact sustain the burden. Mr. President, I could go on and on about what took place at the public hearing. It certainly was the impression of all of the members of the committee that a finding in favor of Wagner/Fraser would be forthcoming. Recently the committee learned that in fact, this did not take place, and that Fraser/Wagner are now subject to unemployment. Needless to say ,the Insurance Committee was stunned by the decision. As you will note in the calendar the bill was reported out 8-0 as ought to pass. We have an old cliché, "I represent government and I am here to help you." It is my feeling that that saying became popular right after some citizen had the misfortune of dealing with the Department of Employment Security. Mr. President, SB 32 is a very narrow scoped bill and only gives relief to people in this particular business. We strongly recommend this bill as ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 52**, requiring insurance coverage for infertility treatments. Insurance Committee. Vote 7-1. Ought to pass with amendment, Senator Squires for the committee.

**1999-1066s**

**01/09**

#### **Amendment to SB 52**

Amend RSA 415:6-g, III as inserted by section 1 of the bill by replacing it with the following:

III.(a) The benefits included in this section shall not be subject to any greater deductible than any other benefits provided by the insurer. The coinsurance required by the enrolled participant may exceed the amount allowed under the contract for the reasonable and customary charge for the service provided.

(b) The benefits included in this section shall be offered by providers and facilities that conform to standards set forth by the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists or other nationally recognized professional or government organizations. All guidelines and recommendations shall be based on scientific recommendations that have appeared in nationally recognized scientific journals.

(c) Nothing in this section shall limit the ability of an insurance carrier to select providers of these services provided that the requirements of subparagraph III(b) are met.

(d) The benefits included in this section shall be limited to those which have gained widespread acceptance in the United States and have been approved by those entities referred to in subparagraph III(b). Amend RSA 415:18-i, III as inserted by section 2 of the bill by replacing it with the following:

III.(a) The benefits included in this section shall not be subject to any greater deductible than any other benefits provided by the insurer. The coinsurance required by the enrolled participant may exceed the amount allowed under the contract for the reasonable and customary charge for the service provided.

(b) The benefits included in this section shall be offered by providers and facilities that conform to standards set forth by the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists or other nationally recognized professional or government organizations. All guidelines and recommendations shall be based on scientific recommendations that have appeared in nationally recognized scientific journals.

(c) Nothing in this section shall limit the ability of an insurance carrier to select providers of these services provided that the requirements of subparagraph III(b) are met.

(d) The benefits included in this section shall be limited to those which have gained widespread acceptance in the United States and have been approved by those entities referred to in subparagraph III(b). Amend RSA 420-A:17-c, III as inserted by section 3 of the bill by replacing it with the following:

III.(a) The benefits included in this section shall not be subject to any greater deductible than any other benefits provided by the insurer. The coinsurance required by the enrolled participant may exceed the amount allowed under the contract for the reasonable and customary charge for the service provided.

(b) The benefits included in this section shall be offered by providers and facilities that conform to standards set forth by the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists or other nationally recognized professional or government organizations. All guidelines and recommendations shall be based on scientific recommendations that have appeared in nationally recognized scientific journals.

(c) Nothing in this section shall limit the ability of an insurance carrier to select providers of these services provided that the requirements of subparagraph III(b) are met.

(d) The benefits included in this section shall be limited to those which have gained widespread acceptance in the United States and have been approved by those entities referred to in subparagraph III(b). Amend RSA 420-B:8-gg, III as inserted by section 4 of the bill by replacing it with the following:

III.(a) The benefits included in this section shall not be subject to any greater deductible than any other benefits provided by the insurer. The coinsurance required by the enrolled participant may exceed the amount allowed under the contract for the reasonable and customary charge for the service provided.

(b) The benefits included in this section shall be offered by providers and facilities that conform to standards set forth by the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists or other nationally recognized professional or government organizations. All guidelines and recommendations shall be based on scientific recommendations that have appeared in nationally recognized scientific journals.

(c) Nothing in this section shall limit the ability of an insurance carrier to select providers of these services provided that the requirements of subparagraph III(b) are met.

(d) The benefits included in this section shall be limited to those which have gained widespread acceptance in the United States and have been approved by those entities referred to in subparagraph III(b).

SENATOR SQUIRES: Senate Bill 52 addresses the availability of insurance coverage for the treatment of infertility. I use treatment by design because in fact, a lot of the diagnostic steps for infertility are already covered, so we have an odd situation where medicine and insurance can demonstrate that someone is infertile, but you can't do anything about it. This bill is timely because of the advance of current medical technology along with in fact a reduction in the cost of treating infertility, although there is no question at some element of increased cost will come into the system. It is however, possible for infertility treatments to be abused, and that is a subject of the amendment, which you will find on page five in your calendar. This bill was amended to make sure that there are national standards and both care for those who provide the service. In brief, an infertility problem is first assuming that there is no demonstrable and anatomic problem. First addressed with infertility drugs and then if that fails, one moves to invitro fertilization. The two agencies that I have referenced here, the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists are currently the two that have set forth the standards for reproductive technology and treatment. There may be others, and the amendment allows for that. This issue for some people is of fundamental importance. It can consume an individual, a family. It is very, very difficult. Given the fact, therefore, that the technology now exists, the controls are in place, it seems that it is at last time, time to do this. It is not the intent of the bill to be wide open. It is the intent of the bill to put into effect the coverage system in which there is some management of what is going on here. There are disputes, I know, about how many times and so on and so forth, and to some extent that is arbitrary, although we could get into that later. I think that this bill ought to pass. It will offer relief to an enormous number of...to some number of couples. I want you to keep in mind that in the case of Tufts health plan, if you are a Tufts residence insured in Massachusetts, you get coverage, if you live a mile across the border, you do not. That makes absolutely no sense. I ask for your support of this bill. Thank you.

SENATOR FRANCOEUR: At this time I rise in opposition to SB 52. This is one of those bills that I think that a lot of people have to stop and take a look at. During testimony we heard numerous pages of testimony as you look through the committee file. It would give some people an idea



of it isn't always just one specific individual that creates the infertility or the production of a child. For no child produced in the first year, the causes were 30 percent would be female and 30 percent male and 30 percent both and 10 percent being unexplained. As Senator Squires mentioned, there were a lot of people on both sides. Those opposing were Harvard Community Health, Brad Cook which is on the religious faith didn't want to pay for some of this. Health Underwriters, BIA, Retail Merchants and the Nashua Chamber. If you look at the cost of this, this is significant for those who would be burdened with paying this. Matthew Thornton, which does cover those in Massachusetts, had claims data last year and their claims for 68 individuals was \$487,000. One claim ran over \$80,000. This as a lot of you already know, New Hampshire rates are already among the highest in the country. Mandating this coverage to be paid by all will only push us further up the list. Currently there are companies that do allow it to be added as a rider and you can get it on those portions. To mandate others, I believe, Mr. President, would just further push more to the uninsured list in the state of New Hampshire.

**Amendment adopted.**

**Recess.**

**Out of Recess.**

**Question is on ordering to third reading.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Roberge.**

**The following Senators voted Yes: F. King, Fraser, McCarley, Trombly, Blaisdell, Squires, Larsen, J. King, D'Allesandro, Wheeler, Hollingworth, Cohen.**

**The following Senators voted No: Gordon, Johnson, Below, Disnard, Roberge, Fernald, Pignatelli, Francoeur, Krueger, Brown, Russman, Klemm.**

**Yeas: 12 - Nays: 12**

**Motion failed.**

Senator Trombly moved to have **SB 52**, requiring insurance coverage for infertility treatments, laid on the table.

**Adopted.**

### **LAI D ON THE TABLE**

**SB 52**, requiring insurance coverage for infertility treatments.

**HB 58**, establishing a committee to study open adoption in New Hampshire. Judiciary Committee. Vote 7-0. Ought to Pass, Senator Wheeler for the committee.

**SENATOR WHEELER:** Mr. President, I rise in support of HB 58. The Senate Judiciary Committee voted 7-0 that this bill ought to pass. It establishes a committee to study the concept of open adoption. **TAPE CHANGE.** to make recommendations as to whether it will be beneficial to children in New Hampshire. The study committee shall examine a practical definition of open adoption and shall analyze the impact of open adoption legislation in other states. Open adoption would permit for instance, an open relationship between a child and his birth parent and an adoptive parent or foster parent. The concept of open adoptions is to allow open information between birth parents, adoptive parents and the adopted child. Contact between the child and the birth parent would not

have to be cut off absolutely. The identity of the birth parent would not necessarily have to be secret. The supporters of the bill believe that more alternatives for adoption would benefit adopted children and increase the comfort level of birth and adoptive parents. Some supporters hope that if open adoption is available and a birth parent would be able to continue to have contact with an adoptive child, birth parents, with unwanted pregnancies, would choose adoption instead of abortion. The supporters believe also that open adoption will encourage adoption of children by foster parents. There was no opposition to the bill although for the record, people did state that there are some concerns about open adoption that would be addressed by this study committee, that there are some confidential issues that would need to be considered. All those that testified agreed that the issue should be studied. I would ask that you also support the establishment of this study committee and the possibility of improving the lives of adopted children. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 64**, relative to changes of registration for undeclared voters. Public Affairs Committee. Vote 3-1. Inexpedient to Legislate, Senator Trombly for the committee.

Senator McCarley moved to have **HB 64**, relative to changes of registration for undeclared voters, laid on the table.

**Adopted.**

### **LAI D ON THE TABLE**

**HB 64**, relative to changes of registration for undeclared voters.

**HB 422**, relative to advertising by rent-to-own businesses. Public Affairs Committee. Vote 4-0. Ought to Pass, Senator Roberge for the committee.

**Senator Roberge moved to recommit.**

**Adopted.**

**HB 422 is recommitted to the Public Affairs Committee.**

**HB 513**, relative to approved permissible fireworks. Public Affairs Committee. Vote 4-0. Ought to pass with amendment, Senator Trombly for the committee.

**1999-1076s**

**03/01**

### **Amendment to HB 513**

Amend the bill by inserting after section 3 the following and renumbering the original section 4 to read as 5:

4 New Section; Public Safety and Welfare; Fireworks; Retail Sale of Reloadable Aerial Shells Prohibited, Penalties. Amend RSA 160-B by inserting after section 16 the following new section:

160-B:16-a Retail Sale of Reloadable Aerial Shells Prohibited; Penalty. The retail sale of reloadable aerial shells is prohibited. In this section, "reloadable aerial shell" means a consumer (formerly class C common) firework device that is individually fused and designed to be inserted by the consumer into a tube prior to firing. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

1999-1076s

## AMENDED ANALYSIS

This bill adds certain items to the definition of permissible fireworks in RSA chapter 160-B. This bill also prohibits the retail sale of reloadable aerial shells.

SENATOR TROMBLY: Each year the House and Senate have to approve these nonprojectile fireworks. Apparently in the process in this bill...the rulemaking authority so that each year we don't have to go over this. This list is approved by the state Fire Marshall and the Fireworks Committee. The amendment allows for that rulemaking process, which would eliminate the need to have legislation introduced every year. There is another amendment, Mr. President, that I will offer if this passes, which will make this bill effective upon passage. The need is for the producers of the fireworks to have their catalogs printed and to have the fireworks go forward and be manufactured by July 4<sup>th</sup> week because after that it is not that productive for them to do that.

SENATOR F. KING: Senator Trombly, I wonder if it would be appropriate if you could give us an explanation of what these various nonprojectile items are?

SENATOR TROMBLY: Yes. These numbers relate to the types of fireworks. They are the permissible fireworks. They are not the type that are shot off into the air and explode on contact. They are the type...some are like the sparklers. Well like any industry, the fireworks industry has to improve their products for the public each year. These reference numbers are the Department of Transportation...is the federal Department of Transportation not the state level. At the federal level is where they regulate those.

SENATOR HOLLINGWORTH: Senator Trombly, I am sorry, I didn't realize that you were saying that the commission would no longer exist. Is that what I heard you say?

SENATOR TROMBLY: No. It will still exist. What happens is that each year a bill, such as this, has to work its way through the legislature and we have to pass a judgement on it. The commission will still exist... and they make their recommendation to us...the commission will still exist, but there will be a rulemaking authority by which the approval of the fireworks will go through rather be an annual affair such as this. The real danger for the industry is that if we don't pass this legislation in a timely manner, they might as well not do what they are going to do. So in section II, Senator Hollingworth, you will see that it allows for the rulemaking to go forward, but the state Fire Marshall and everybody else will still be very involved with that.

SENATOR HOLLINGWORTH: The thing is that it talks about the repeal that the commission has adopted under this. Are you sure that the commission is not being repealed along with the action that has to be taken on the floor?

SENATOR TROMBLY: Right, because the commission will be the one that is governed by the rules.

SENATOR HOLLINGWORTH: I am very nervous about the idea that...the commission that has been established has been established because of an agreement and I am nervous...is the same commission that has been established in law going to be the same commission that is going to be established under rules?



SENATOR TROMBLY: The answer to your question is yes. I would ask you, Senator Hollingworth, if you would not table this giving the urgency. We did amend it in the Senate and it now needs to go back to the House for concurrence. So to the extent that you want to verify what I have told you, if you pass it today with the amendment, there will be time to verify what you want to do.

SENATOR HOLLINGWORTH: But they could just concur and it could go. I will let it go under the urgency, but I am sorry that I haven't looked at this before now, but I am very cautious. As you know we have had many deaths and injuries in the state of New Hampshire, and that it was a very bitter fight to make sure that this commission was established. It was agreed upon that this would be a way to check and balance so that the legislature could determine that we would not be back to where we were before, because in prior years they were supposed to be "safe and sane" fireworks and we found that there was a lot of lack and there was approval of fireworks that were in fact very dangerous.

SENATOR TROMBLY: If you read that section which is giving you some concern, it says that it is not repealed until the commissioner of safety has adopted rules relating to the recommendations of the permissible fireworks committee. So those recommendations have to be developed by the very committee that you fear is being adopted. That committee is staying the way that it is. Do not have any fear that it is being repealed.

#### **Amendment adopted.**

Senator Trombly offered a floor amendment.

**1999-1101s**

**05/09**

#### **Floor Amendment to HB 513**

Amend the bill by replacing paragraph II of section 5 with the following:

II. The remainder of this act shall take effect upon passage.

SENATOR TROMBLY: Mr. President, I rise to offer a floor amendment that simply amends the bill by allowing the bill to take effect upon passage and to speak to that very briefly. The producers of the fireworks need to manufacture their catalogs and go forward with producing these products. If we wait 60 days they will not be able to do that. The previous amendment and the current amendment have the approval of the state fire marshal's office.

#### **Floor Amendment adopted.**

#### **Ordered to third reading.**

**HB 664**, establishing a study committee on rights of ownership to cemetery plots. Public Affairs Committee. Vote 4-0. Ought to pass with amendment, Senator Roberge for the committee.

**1999-1049s**

**08/09**

#### **Amendment to HB 664**

Amend the bill by replacing section 4 with the following:

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section.

SENATOR ROBERGE: Mr. President and members of the Senate, HB 664 establishes a study committee to investigate ways to update, clarify and otherwise improve the laws of the state regarding ownership of cemetery plots. Currently in New Hampshire, situations have arisen where parents have purchased cemetery plots, and after the parents have died, the siblings have disagreed over who has the right to be buried in the remaining plots. Neither the Probate Court nor the Registry of Deeds has jurisdiction in this matter. While this does not appear to happen too frequently, there are no rules or regulations as to how these disputes are to be resolved. Establishment of this study committee would provide the means to address rights of ownership of these cemetery plots. The committee amendment removed the requirement for a quorum to be present. The Public Affairs Committee recommends HB 664 be adopted, as amended, by the Senate.

**Amendment adopted.**

**Ordered to third reading.**

**SB 128**, replacing the housing assistance fund trust fund with a homeless prevention fund. Public Institutions, Health and Human Services Committee. Vote 5-0. Rereferred to Committee, Senator Squires for the committee.

SENATOR SQUIRES: This is a bill that Senator D'Allesandro and I brought forth. The idea being to offer some sort of assistance to working people who are paying more than 50 percent of their incomes either in rent or utilities. What the bill would have done, would have been to supply, for a period of three years, a subsidy to individuals like that so those costs lower to 30 percent of their income. In the original bill we had a surcharge as it were on the real estate transfer tax. Well, given what has happened here, it seems that that is no longer a solution. It is also to be realistic, not likely to find a home in the budget; however, in the testimony on this bill, we did hear a discussion from one of the attorney's for homeless people suggesting that there may be TANIFF funds available to the state that could be used for this purpose. We don't know that, we didn't have time to track it down, but if that is the case, I just want to keep this bill alive so that we can revisit it next year should funds of that nature become available. That is the reason that we have a recommendation to rerefer it. I hope that you will support that motion. Thank you.

**Adopted.**

**SB 128 is rereferred to the Public Institutions, Health and Human Services Committee.**

**SB 197-FN-A**, establishing a pilot program for methadone maintenance treatment and making an appropriation therefor. Public Institutions, Health and Human Services Committee. Vote 4-1. Ought to pass with amendment, Senator Wheeler for the committee.

**1999-1074s**

**01/09**

### **Amendment to SB 197-FN-A**

Amend the title of the bill by replacing it with the following:

**AN ACT** establishing a pilot program for opioid agonist therapy of addiction and making an appropriation therefor.

Amend the bill by replacing section 1 with the following:

1 Pilot Program for Opioid Agonist Therapy of Addiction.

I. The general court hereby establishes a pilot program to determine the efficacy and appropriateness of opioid agonist therapy of addiction. This pilot program shall terminate 2 years after the first date of operation of the program, as certified by the commissioner of health and human services to the secretary of state, unless authorized to continue by the legislature. The pilot program shall consist of up to 5 sites as deemed necessary by the director of the bureau of alcohol and substance abuse services to obtain a reasonable sampling of approaches and results needed to ascertain which models, if any, are appropriate to meet the needs of all New Hampshire residents including those in rural settings, those with minimal capacity to pay, and those for whom the use of methadone is contraindicated. The program shall be administered by the director of the bureau of alcohol and substance abuse services, department of health and human services. In order to implement this pilot program the commissioner, in consultation with the director of the bureau, shall adopt rules pursuant to RSA 541-A relative to the administration of the pilot program.

II. The director of the bureau of alcohol and substance abuse services may pursue additional funding for this pilot project in the form of grants from federal and private foundation sources and may expend such grants, moneys, and any appropriation for the purposes of the program.

III. The pilot program authorized by this act may supercede the provisions of RSA 318-B to the extent necessary to carry out the program; provided, that all procedures are in conformance with federal laws and regulations.

1999-1074s

#### AMENDED ANALYSIS

This bill establishes a pilot program to obtain sufficient data to determine the efficacy and appropriateness of opioid agonist therapy of addiction and to determine the most favorable model, if any, for state-wide availability of such addiction treatment. The pilot program is to be administered by the bureau of alcohol and substance abuse services, department of health and human services. The commissioner of health and human services is granted rulemaking authority for the purposes of this bill.

The bill makes an appropriation for the purposes of the bill.

SENATOR WHEELER: I rise in support of SB 197 as amended. The amendment is on page seven of today's calendar. If you read it, you will see that we are no longer talking about methadone. The bill establishes a pilot program to determine the appropriateness of opioid agonist therapy of addiction. The program will consist of up to five sites as deemed necessary by the director of the Bureau of Alcohol and Substance Abuse Services to obtain a reasonable sampling of approaches and results needed to ascertain which models are appropriate to meet the needs of all New Hampshire residents. A consensus panel convened by the National Institutes of Health (NIH) strongly recommends broader access to opioid agonist therapy programs for people who are addicted to heroin or other opioid drugs. NIH also recommends that the federal and state regulations and other barriers, impeding this access be eliminated. New Hampshire has an opportunity for leadership in the treatment of those who are opioid drug dependent. Due to the low density of individuals with addictions and current support by state and federal groups, New Hampshire is an ideal setting for a model pilot program for opioid agonist therapy. This pilot program would allow New Hampshire



to gather sufficient data on this type of drug treatment, while providing citizens with services that they need to see what our future plans should be in this state. There is enormous support for this. I have received phone calls from all over the state, not just my district, about people who have family members who go every day to Massachusetts and Maine for the daily treatment that we do not allow in New Hampshire. I urge you to think of the individuals who need this kind of drug therapy and vote SB 197 as amended ought to pass. Thank you.

SENATOR SQUIRES: I rise briefly to clear up a linguistic problem here. We had much humorous comment in our hearing about this word "agonist". Now it is not agonistic and it is not agony and it is not a lot of things, it is a medical term and it comes from the Greek. Basically it means "in opposition." It is a counter to opioid, so there is no religious connotation here or other obscure attachments to the word.

SENATOR FRANCOEUR: Senator Squires, where it is the amended version, what happened to the fiscal note? Is it still the same, or has it changed, or is there none?

SENATOR SQUIRES: I would like to defer to Senator Wheeler.

SENATOR WHEELER: The appropriation is the amount of \$1 for the biennium and that remains the same. The fiscal note is unchanged.

SENATOR FRANCOEUR: So it is one dollar?

SENATOR WHEELER: Yes, the bill is in your packet. The amendment is only for section one, so the report on the appropriation and the effective date remain the same as in the bill.

**Amendment adopted.**

**Referred to the Finance Committee (Rule #24).**

**SB 223 FN-A**, establishing a wellness and primary prevention council and making an appropriation therefor. Public Institutions, Health and Human Services Committee. Vote 6-0. Ought to pass with amendment, Senator Wheeler for the committee.

**1999-1078s**

**04/01**

### **Amendment to SB 223-FN-A**

Amend RSA 126-M:2, I and II as inserted by section 1 of the bill by replacing them with the following:

I. "Wellness and primary prevention services" may include, but are not limited to:

- (a) Parenting education.
- (b) Parent support groups.
- (c) Developmentally appropriate infant and toddler care.
- (d) Play groups for families with young children
- (e) Home visiting.
- (f) Before and after school programs.
- (g) Tutoring.
- (h) Mentoring.
- (i) Job readiness.
- (j) Literacy and educational opportunities
- (k) Skill building.
- (l) Health and developmental screenings for children.
- (m) Information and referral.

- (n) Outreach and community development initiatives.
- (o) Recreational opportunities.
- (p) Health promotion.
- (q) Illness and injury prevention.
- (r) Community service and diversion activities.

II. "Family resource centers" means places in communities that are open to all families to provide wellness and primary prevention services and that partner with families to empower them so that families and communities thrive.

Amend RSA 126-M:3, III (c) as inserted by section 1 of the bill by replacing it with the following:

(c) The council shall, to the extent of available funds, hire a coordinator of wellness and primary prevention programs, to assist the council in the performance of its duties. The department of health and human services shall provide information and administrative support to the coordinator as the department may deem reasonable.

Amend the bill by replacing section 2 with the following:

2 Appropriation. The sum of \$75,000 is hereby appropriated for the fiscal year ending June 30, 2000, for the purpose of funding the coordinator position established in RSA 126-M:3, III(c) as inserted by section 1 of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

**1999-1078s**

### AMENDED ANALYSIS

This bill establishes a wellness and primary prevention council for the purpose of encouraging, promoting, and coordinating wellness and primary prevention services statewide. The bill makes an appropriation for the purpose of funding the position of a coordinator of wellness and primary prevention programs statewide.

SENATOR WHEELER: Mr. President, I rise in support of SB 223 as amended. This bill is the culmination of a study committee established last year pursuant to SB 360. This legislation establishes a wellness and primary prevention council for the purpose of encouraging, promoting and coordinating wellness and primary prevention services statewide. There are numerous family resource centers and wellness and primary prevention services offered throughout the state of New Hampshire. This council is designed to assist and support these groups, not regulate them. The aim is to coordinate local and statewide efforts and form partnerships, so that our programs will be effective and address the appropriate areas of need. The amendment to SB 223 offers a reordering of the council membership and allows the council to hire a coordinator of wellness and primary prevention programs to the extent of available funds. The coordinator would assist the council in the performance of its duties. If the funding is available for this position, the Department of Health and Human Services shall provide information and administrative support to the coordinator, as the department may deem reasonable. This is an important bill. It recognizes that investment and prevention and early intervention services saves future costs by reducing the needs for corrective programs, incarceration, out of home placements, special education and other remedial services, particularly for disadvantaged families and families with young children who are at risk medically, socially and educationally. It is known that primary prevention and family support services are most effectively provided at the community level

with coordination, encouragement and financial help from the state. I urge you to think of the children who represent the future of this state and vote SB 223 as ought to pass with amendment.

**Amendment adopted.**

**Referred to the Finance Committee (Rule #24).**

### **TAKEN OFF THE TABLE**

Senator F. King moved to have **HB 240**, prohibiting the reintroduction of wolf populations to the state of New Hampshire, taken off the table.

**Adopted.**

**HB 240**, prohibiting the reintroduction of wolf populations to the state of New Hampshire. Ought to pass.

Senator F. King offered a floor amendment.

**1999-1094s**

**01/03**

### **Floor Amendment to HB 240**

Amend the title of the bill by replacing it with the following:

**AN ACT** prohibiting the introduction of wolf populations to the state of New Hampshire.

Amend the bill by replacing all after the enacting clause with the following:

1 Statement of Intent. If the federal government permits the states to introduce wolf populations, the intent of this act is to prohibit the introduction of wolves to the state of New Hampshire.

2 New Subdivision; Wolf Introduction Prohibited. Amend RSA 207 by inserting after section 60 the following new subdivision:

#### **Wolf Introduction Prohibited**

207:61 Wolf Introduction Prohibited.

I. For the purposes of this subdivision, "wolf" means any canine classified as *Canis lupis* or *Canis rufus*.

II. No person or state agency shall introduce wolf populations to the state of New Hampshire.

3 Applicability. Nothing in this act shall prohibit the natural integration of wolves to New Hampshire.

4 Effective Date. This act shall take effect 60 days after its passage.

**1999-1094s**

### **AMENDED ANALYSIS**

This bill prohibits the introduction of wolf populations to New Hampshire in the event the federal government permits such introduction.

**SENATOR F. KING:** This is the so-called wolf bill. The amendment replaces the original bill. The bill was very short in the first instance. This legislation is no doubt a site-specific legislation for New Hampshire. This is something that is only a concern probably to the citizens in the North Country, because, if the U.S. Fish and Wildlife Services were to introduce a program in New Hampshire to introduce the wolf back here, they would not be backing a truck up on the State House lawn and unloading the wolves, they probably wouldn't be doing it anywhere south of the mountains. They probably would be doing it, if they do it at all, in the North Country, and that is why it is a concern. This amendment



makes it very clear, that if the wolves come back into New Hampshire on their own, that is great, we welcome that. Our opposition is to having them brought back artificially. That has been done in other parts of the country. I have been around in the North Country and into New Hampshire long enough to remember when there were no coy-dogs or eastern coyotes, as they are commonly called. I can remember when there were no moose. I spent a lot of my time in the woods in the North Country in the 45 years or more that I have lived there. These animals came back naturally. They adjusted very well to the multiple use of our large forest areas. They have accommodated themselves to our historical timber operations, and it has worked very well. There are people who probably feel, and it may well be true, that there are already wolves in New Hampshire in the North Country. There have been reported sightings, although, as you probably understand, the wolf and the coy-dog are just cousins, even though they don't exist very well together, they are really just the same type of an animal. As further evidence to the fact that the coy-dog has been successful, I am going to read an article out of a recent magazine that I picked up, bearing in mind that the coy-dog came back all by themselves. This relates to an incident that happened. A mother glanced into her backyard and was horrified to see a coyote mauling her son. Had she not rushed out and beaten off the animal, the boy surely would have been killed. Fish and Game biologists went on to say that coyotes come to expect a handout or to find food around houses. This changes their natural behavior. We get a lot of reports that coyotes are becoming pets and lingering in back yards and following approaching people. So the coy-dog is very adjustable, just like the wolf will be. They are not protected. This incident did not happen in New Hampshire, it happened down in Cape Cod. Down in Cape Cod, coy-dogs are a major problem down there, they are so prevalent. So the animals can adjust very well without any need for us to enter into it. They have been introduced in places in the West. There is an incident here as reported out in USA Today last year. It says, "This winter more wolf families will be released in a \$7.2 million effort to restore a predator that once roamed parts of three states." I suggest that you don't need to spend money to do that, it will happen naturally. One of our own biologists speaks about the coyote, cause the charge has been made that they are decimating the deer herd, and there is no doubt that they do kill deer, especially the small ones. He went on to say that the coyote is a very territorial animal. They defend an area of about 25 square miles, which in itself makes the animal self limiting because the state just isn't that big. Then he goes on to say later in his article that New Hampshire is the place to be for people wanting to enjoy wildlife. There are about 4000 bear in the state, which is a high number. There are about 3 moose per square mile. Right now there are more deer, bear, moose and coyotes in this state that have been here in the last 150 years, and this all happened without any help from mankind, it just took place naturally. What will happen when the wolves come is that the coyotes will be reduced in numbers. The wolves that were released in Yellowstone National Park have killed a significant number of coyotes, so nature takes care of itself. The concern that we have, and is a real legitimate concern, because it has happened in other areas, is that the coyote needs 25 square miles and a wolf needs more than that, and what happens when they unload that truck and dump those wolves into the timberlands in the North Country, along with it will come some new rules and regulations. We will be told that the wolves have to be left alone. They have

to adjust naturally and we have to not interfere with them. We will be asked to set aside a large area of land so that the wolves can acclimate themselves to that area. When that happens, it is another intrusion on our timber resource, which is a significant issue. The New Hampshire Fish and Game Department supports this legislation as does the Industrial Landowners. What it simply says is that when the wolf comes back we will welcome it, but let's not do it artificially. It is a significant issue. It is a dollar and cents issue to my district. I ask for your support.

SENATOR RUSSMAN: I rise in opposition to the bill. Frankly, if this were to happen, they are not going to be released in New Hampshire anyway. If they were ever going to be released, they would be released in Maine, where there is so much more open space than there is in New Hampshire. My concern is that the statement of intent still says that the federal government permits the state to reintroduce wolf population and the intent of this act is to prohibit the introduction of wolves to the state of New Hampshire. I happen to think...we just talked about a bill not too long ago about damage that moose and deer have been doing in the state and how to pay for that. Here is one way that would take care of itself in terms of nature taking care of itself. I don't know of any bills that we have passed that prohibited the reintroduction of coyotes or the reintroduction of moose or anything else in the state. Why we have to go out and be proactive on the wolf issue is beyond me. I have camped and hiked and I have seen grizzly bears, I have been in grizzly bear country, I have happened to have the good fortune of seeing a wolf in Colorado. I have had rattlesnakes rattle at me in Southern Utah. I am more afraid certainly in some urban areas of walking around with two legged predators; and frankly, I would be more worried about introducing the two-legged predators in the North Country in the state prison than I would be of introducing these wolves. I think that...I heard a piece on the public radio this morning that said that the leading cause of death for kids up to one-year old is homicide, if you can believe that. If you stop and think of it, I think your average Pit bull or your rottweiler is probably far more dangerous to the neighborhood and to the citizens of New Hampshire, and we certainly don't pass laws outlawing Pit bulls or rottweilers at this point. I know that in Yellowstone when I was out to Jackson Hole about a year ago and the outfitters out there, they are a large industry there that is taking tours up to Yellowstone out of Jackson Hole to try to see wolves and make some money on that. Certainly my guess is that if we had them here in New Hampshire, we would probably have far less moose car collisions and we would probably have far less deer problems and certainly there would still be plenty of those animals for the hunters to hunt so that we would continue to enjoy a large or perhaps increased amount of tourism in the state. I think that it is basically a matter of tolerance. People have had preconceived ideas about wolf populations and it is my understanding that in the areas that they have been reintroduced, there haven't been huge areas set aside. Some of the national parks where they have been reintroduced, those areas were already set aside to begin with. It is not a question where suddenly you are going to have areas that are set aside because obviously, they wouldn't be introduced unless the habitat was already available for them here in the Northeast. Certainly I think that there is a problem with the bill, is that it sends the wrong message. I don't know if we have to go and preeminently issue a strike against wolf reintroduction, as this seems to do.

SENATOR COHEN: Senator King. I guess this is a point of clarification. I heard you talking about the danger and nuisance presented by coy dogs and then I thought that you said that there have been a lot of coy dogs and the problem with the little kid there that happened to be in Cape Cod. I thought I heard you say that if wolves did come back, where they have been before, then there would be less of a population of coy dogs.

SENATOR F. KING: You heard me right. That is the report of a biologist, because the wolves and the coy dogs fight over the area and the wolf being larger kills the coy dogs. That is what happens.

SENATOR COHEN: If coy dogs are a problem as you say that they are, and wolves will reduce the number of coy dogs...

SENATOR F. KING: The incident that I raised about the young child on Cape Cod was **TAPE CHANGE** that the coy dog came back without any help to Northern New Hampshire and Northern Vermont and Maine and now on its own, is now in large numbers down in Cape Cod. Nobody had to do that, nobody had to contribute to that effort. I want to make it clear even though I enjoyed Senator Russman's comments, this is not a safety issue, and this is an issue of economy. Now perhaps if you live in Southern New Hampshire you think that tourism is a way that we ought to live in the North Country, but right now we need forest jobs. We need industrial jobs and we don't want our timberland imposed upon. That is what happened to other places and that is what will happen here when the federal government moves in and brings wolves. That is what happens. When the wolves come back by itself, we will know that it can adjust to the historical use of the land and it won't be a problem for us.

SENATOR COHEN: If I may, it sounds as though you are arguing against your own amendment by saying that the coy dogs are a problem and that they were introduced without their natural predators and look what happened.

SENATOR F. KING: I didn't say that the coy dogs were a problem. I never said that they were a problem. I said that they have become very prolific, they are all over the place because they are able to do that. The wolves will be able to do that too. Nobody helped the coy dog in there. I remember when there weren't any coy dogs.

SENATOR COHEN: Thank you.

SENATOR WHEELER: I rise in opposition to this bill. I think that Senator Russman's remarks were very well thought out and well considered. I read an article some months ago by John Harrigan not supporting this legislation, saying that it was premature. Not making a decision on whether the wolf should be reintroduced into New Hampshire, but to have this preemptive strike was not an appropriate thing to do now. I listened to the report on New Hampshire Public Radio yesterday where the House prime sponsor of this was interviewed and he was perfectly honest about saying that he had done no research on it, but that he wouldn't want to walk in the woods if there were wolves in them. He doesn't seem to mind walking in the woods with bears. I submit to you that a lot of this is based on what the kinds of fairy tales that we grew up and the fear and ignorance that we have. The big bad wolves, Little Red Riding Hood. Wolves have gotten a bad rap all along and I think that we should consider not making this position against wolves, which seem as though we are banding together and saying, "Who is afraid of the big bad wolf?" The New Hampshire legislature is. I am reading this story a lot to my granddaughter now and we do all of the dialogue and we love it together.



The line that we particularly like is the one that I feel that this legislation says when the wolf says, "Can I come in?" And we say, "Not by the hair on my chinny, chin-chin." I feel that this response is about as mindless as that. We should wait until somebody talks about reintroducing the wolf and then we will discuss it. I do not believe that it will harm the economy. As far as natural coming back of the wolf, they are in Canada now and because the St. Lawrence seaway is kept open during the winter, it is unlikely that there will be enough ice for the poor wolves to come across to come down to us anyway. Thank you, Mr. President.

SENATOR GORDON: Senator King, I just want to make sure that I understand your intent? In the bill and as Senator Russman pointed out, the statement of intent says that it is to prohibit the introduction of wolves. I am having problems with the word "introduction" I guess. It makes it sound as though we are getting together at a tea party or something. When you say in the part of the bill where it says, "No person or state agency shall introduce wolf populations in the state of New Hampshire." Is your intent there to mean that they won't specifically release them in the state of New Hampshire?

SENATOR F. KING: Yes.

SENATOR GORDON: I guess the question is, if somebody releases them over in Bethel, Maine and they come to New Hampshire, would that be a violation of this act?

SENATOR F. KING: No, we would welcome them and give them a visa.

SENATOR GORDON: Thank you.

SENATOR FERNALD: Senator King, you spoke about the timber industry. In other parts of the country where wolves exist or have been reintroduced, has it had any effect on the timber industry?

SENATOR F. KING: In Yellowstone National Park they have reintroduced them and they don't cut timber in the national park anyway.

SENATOR FERNALD: You said that they don't cut timber?

SENATOR F. KING: Correct.

SENATOR FERNALD: But did they use to?

SENATOR F. KING: Yes, a long time ago.

SENATOR FERNALD: But my question is, did the introduction of the wolves, have any impact on the timber industry?

SENATOR F. KING: They don't cut timber there anyway, so it is an academic question.

SENATOR FERNALD: So I guess your answer is no, it doesn't have any effect on the timber industry.

SENATOR F. KING: They don't cut timber there so therefore, they don't have to worry about it, but they do cut timber in the North Country and you do have to worry about it.

SENATOR FERNALD: So you are concerned that the reintroduction of the wolf would result in restrictions on timbering?

SENATOR F. KING: Yes.

SENATOR FERNALD: Do wolves eat deer?

SENATOR F. KING: Yes. They don't eat timber, they eat deer.

SENATOR FERNALD: Does the cutting of trees increase browse for deer?

SENATOR F. KING: Absolutely.

SENATOR FERNALD: So that timbering increases the deer population?

SENATOR F. KING: May I restate my position, Mr. President. It will help Senator Fernald understand?

SENATOR FERNALD: I would like an answer to my question. Does cutting trees increase browse for deer?

SENATOR F. KING: Yes.

SENATOR FERNALD: Would that then increase the food supply for wolves?

SENATOR F. KING: Yes.

SENATOR FERNALD: So why do you think that introducing wolves would somehow be a problem for the timber industry? How do trees help wolves? It sounds as though cutting trees helps wolves.

SENATOR F. KING: The answer to the question is where animals have been introduced like this, into an area, restrictions have been put on the use of the land in order to give the wolf a chance to acclimate themselves to the surroundings. When you put new regulations in these timbered areas, which mean that you can't cut down the trees. That is the issue. That is what happens. Historically that is what has happened when this has happened. My concern is not the wolves coming in, and I am not worried about Little Red Riding Hood, and I don't think that anybody has said here today that we consider the wolf a threat to children and humans. What I said is it seems to be a threat against the timber industry, which reduces the availability of timber resources, that hurts our economy in the North Country. We welcome tourism to the North Country and we need timber as our basic form of jobs. You don't have to have that where you live probably, but where I live, that is the lifestyle. That is the concern of bringing them back artificially. If they come back by themselves like coyotes, no one will be able to say that you have to have special regulations, because we didn't have coyotes, they just moved in and took over, and we have welcomed them.

SENATOR KRUEGER: Just a few minor points to make on this issue. I rise in support of the bill. I came in late on Senator King's testimony on this bill, I apologize for that. I was very impressed during those hearings by the biologists that spoke about the fact that there is real indication that possibly the grey wolf really never was here in the first place and that it was a red wolf, and we would be reintroducing the wrong wolf. Next, I did have the pleasures, the very night that it was debated in committee, of going home and turning on Public Television and there was this very long program about wolves in Yellowstone. As much as we would like to think that the program has worked perfectly, according to this very unbiased look at the situation, it would appear that yes, there were problems. So maybe some of the fears that people have might be well founded. Next, I was interested during the hearings that some of the people who are very pro animals, had great concerns that it was actually detrimental to wolves to start reintroducing them to places that maybe they shouldn't be in the first place. Last and most impressive to me was the fact that the people who lived in the area where the most economic impact would be felt, these very people who try hard to make

sure that snowmobilers are up there just because it is an economic advantage, despite whatever reasons they might have against that, stood there in great numbers and said, "this is bad for our economy." I feel as someone, who represents a more central southern part of the state, that I would have no right to do anything that would economically hurt the North Country. Thank you.

SENATOR DISNARD: I rise as Chairman of the Wildlife and Recreation Committee. Try to put yourself in my position. This is the second time that we have introduced or discussed this bill. The people that appeared at the hearing represented the workers. Four thousand names to a petition. Eighty-three pages of another set of petitions, almost filled on both sides, yet this is the second time that we have discussed this bill and these people are worried about their jobs, the farmers are worried about their animals, the hunters are afraid that the property owners are going to close their land, and yet we make humor and we laugh. If you were worried about your job, how would you like to be sitting somewhere at a hearing and hear the professional Senators making fun and humor when they are concerned about their jobs? As chairman of the Wildlife and Recreation Committee, I really object to this. The Fish and Game Department is against the reintroduction of wolves. I support this bill and as Chairman, I will always support the committee. I think that we need some feeling and respect for other people and not make fun when they are worried about their jobs and feeding their families. I am sorry if I stepped on toes here today.

SENATOR RUSSMAN: Senator Disnard, my understanding was...two things, one is when Jim DeStefano testified, he did not testify either for or against the bill, is that correct?

SENATOR DISNARD: No, it is not correct. When he testified he began to speak for the commissioners and the stand ...I have the testimony here...then I asked him a question. I asked him, "What do the biologists think about this?" He said, "They were not involved in the decision making." The question that he was presenting was the side of the Fish and Game Department and the director of the commissioners...when I asked him the question he was indicating that the biologist in the Fish and Game Department were not consulted as to their professional opinions.

SENATOR RUSSMAN: Would you believe that the only area that they have been reintroduced where there have been restrictions is in Yellowstone Park, which is a park to begin with, and there was no logging there in any event, and this is unlike something like a spotted owl or any of these other items that suddenly they find there where they might put restrictions? Are you aware of that?

SENATOR DISNARD: Yes. Would you also believe that the federal government is considering removing the wolves that they reintroduced into Yellowstone National Park because of the problems concerned with the animals in the area, and the hunters killing these wolves that are attacking their animals. So yes, I do believe what you said and I trust that you will believe what I am saying.

SENATOR LARSEN: Senator Disnard, through the hearings at which I wasn't at attendance, did you hear that the state of New Hampshire is going to have wolves introduced in the near future? Is this something which is imminent, because what I heard was that it wasn't in fact, something that was not being planned in the near future and I didn't hear the hearing?



SENATOR DISNARD: I think that I understand your question. Your question to me is the state of New Hampshire planning on introducing wolves? Is that your question?

SENATOR LARSEN: Either that or are their plans to reintroduce wolves in New Hampshire in the near future?

SENATOR DISNARD: The Fish and Game Department has been very plain in many statements in the Concord Monitor and on television in the state and papers all over the state, that they do not plan, they do not support the reintroduction of wolves, an unnatural process, but there is nothing that they can do if they migrate naturally. So what you are saying is a strong rumor and people in New Hampshire love to believe that and spread that rumor.

SENATOR LARSEN: I am sorry, I didn't understand your answer.

SENATOR DISNARD: It is a rumor.

SENATOR LARSEN: What rumor, that the wolves were going to be reintroduced?

SENATOR DISNARD: I guess that I am doing a poor job. Senator, I am trying to say that the Fish and Game Department is on record, that they do not support and they do not have any plans whatsoever, to reintroduce wolves by artificial means or unnatural process and that they would not support or allow the federal government.

SENATOR LARSEN: Thanks.

SENATOR GORDON: Having had it explained to me that the purpose of the bill is simply to prevent the release of wolves in New Hampshire, I am going to support it. The reason that I am going to support is because I think that I understand what is going on in the North Country. You have to think why would you ever be a manufacturing company to be in the North Country of New Hampshire? You are far away from markets, you don't really have that great of transportation to get there, your property taxes are high, you have business profits tax on your business. The power costs are so high in the northern part of the state that many of the manufacturers up there run their own diesel generators because they can produce their own electricity cheaper than they can buy it from the suppliers in this state. There really is no reason to be a manufacturer and be in Northern New Hampshire except for one reason, and that is that you are close to the raw materials that you need to produce your product. There is only one raw material available in the North Country and that is the renewable timber that our land produces. So these people that live in the North Country are reliant upon the timber industry to make their livings, to feed their families. You don't have to ask them about whether or not they need to be concerned about their jobs, what you need to do is to ask the Indiana Bat whether they need to be concerned about their jobs? The fact is, I think that it would be a tremendous insult for us today, to go up to the northern part of the state and start releasing wolves. It would be an insult to those people in the northern part of the state. Now I don't oppose the idea that wolves be introduced into the state, I think that it would be a great idea frankly. Like Senator King, I spent a great deal of my time as a younger person in the woods. I enjoyed being in the woods and I still enjoy being in the woods. I would like to see wolves reintroduced. If they are introduced in Maine and they come over the border because they can't read the signs, then that is fine. If they come over here I would like to see them

here, but I think that it would be insulting for us to go up there and intentionally release them and put people in a situation where they feel their jobs have been put in jeopardy. This is a very simple request on the part of the people of the northern part of the state. It would seem to me that we could honor that request.

**SENATOR WHEELER:** Senator Gordon, thank you for yielding. It is really a would you believe question. Although would you believe that although I sometimes use humor to make a point, I am not insensitive to people's needs? Would you further believe that I have no wish to insult anyone in the North Country? The last would you believe, is that I have expressed my opposition to this because I believe that it is premature and that the time to discuss whether it would have a negative impact would be at the time that there was actually a proposal to reintroduce the wolves? Would you believe those, Senator Gordon?

**SENATOR GORDON:** I believe that you believe that. I believe that we will all be in trouble when we start losing our sense of humor even when we are dealing with important issues.

**SENATOR WHEELER:** Thank you.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator F. King.**

**Seconded by Senator Krueger.**

**The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Trombly, Disnard, Roberge, Blaisdell, Squires Francoeur, Krueger, Brown, Klemm, Hollingworth.**

**The following Senators voted No: Below, McCarley, Fernald, Pignatelli, Larsen, J. King, Russman, Wheeler, Cohen.**

**Yeas: 14 - Nays: 9**

**Floor Amendment adopted.**

**Ordered to third reading.**

### **TAKEN OFF THE TABLE**

Senator Wheeler moved to **SB 69-L**, relative to healthcare charitable trusts and community benefits, taken off the table.

**Adopted.**

**SB 69-L**, relative to healthcare charitable trusts and community benefits.

Senator Wheeler offered a floor amendment.

Sen. Wheeler, Dist. 21

Sen. Squires, Dist. 12

**1999-1103s**

**08/01**

### **Floor Amendment to SB 69-LOCAL**

Amend the bill by replacing all after the enacting clause with the following:

1 New Subdivision; Community Benefits. Amend RSA 7 by inserting after section 32-b the following new subdivision:

#### **Community Benefits**

7:32-c Purpose. The purpose of this subdivision is to ensure that health care charitable trusts provide the communities they serve with benefits

in keeping with the charitable purposes for which the trusts were established and in recognition of the advantages the trusts enjoy. It acknowledges that each community is unique and its particular health care problems and needs should be examined and the community benefits provided by health care charitable trusts which serve it should be directed toward addressing the issues and concerns of that community. Community involvement in the development of community benefits plans is necessary to make the health care charitable trusts more responsive to the true needs of the community. State oversight of the planning process and public access to the community benefits plans will assure appropriate use of the resources of health care charitable trusts.

7:32-d Definitions. In this subdivision:

I. "Charity care" means health care services provided by a health care charitable trust for which the trust does not expect and has not expected payment and which health care services are not recognized as either a receivable or as revenue in the trust's financial statements.

II. "Community" means the service area or patient population for which a health care charitable trust provides services.

III. "Community benefits" means a health care charitable trust's activities that are intended to address community health care needs including, but not limited to, any of the following:

(a) Charity care.

(b) Financial or in-kind support of public health programs even if the programs extend beyond the trust's service area, including support of recommendations in any state health plan developed by the department of health and human services.

(c) Allocation of funds, property, services or other resources that contribute to community health care needs identified in a community benefits plan.

(d) Donation of funds, property, services, or other resources which promote or support a healthier community, enhanced access to health care or related services, health education and prevention activities, or services to a vulnerable population.

(e) Support of medical research and education and training of health care practitioners.

IV. "Community benefits plan" means a written document prepared by a health care charitable trust which identifies health care needs in the area served by the trust and describes the activities the trust has undertaken and will undertake to address the identified needs.

V. "Health care charitable trust" means a charitable trust organized to provide health care services, including, but not limited to, hospitals, nursing homes, community health services, and medical-surgical or other diagnostic or therapeutic facilities or services. "Health care charitable trust" shall not include any testamentary or inter vivos trust which is not organized to provide health care services.

VI. "Vulnerable population" means any population that is at risk of not receiving health services due to medical, financial or other barriers.

7:32-e Community Benefits Plans. Within 90 days of the start of its fiscal year every health care charitable trust shall develop a community benefits plan. The plan shall be developed in accordance with the following criteria:

I. The trust shall adopt a mission statement which shall be included in its plan and which shall be reaffirmed by the trust on an annual basis.

II. The plan shall take into consideration a community needs assessment conducted in accordance with RSA 7:32-f and shall identify the health care needs that were considered in development of the plan.



III. The plan shall identify the activities the trust expects to undertake or support which address the needs determined through the community needs assessment process or which otherwise qualify as community benefits and shall include all charity care in a discrete category.

IV. The plan shall include a report on the community benefit activities undertaken by the trust in the preceding year and information describing the results or outcomes of the trust's community benefit activities. The report shall also include the means used to solicit the views of the community served by the trust; identification of community groups, members of the public, and local government officials consulted on the development of the plan; and an evaluation of the plan's effectiveness.

V.(a) To the extent practicable, the plan shall include:

(1) An estimate of the cost of each activity expected to be undertaken or supported in the ensuing year; and

(2) A report on the unreimbursed cost of each activity undertaken in the preceding year.

(b) For reporting purposes, the cost of contributed services shall be determined in accordance with the rates, costs, units of service or other statistical measures used for general accounting purposes by the health care charitable trust. In addition, each charitable trust shall include in its report the ratio of its gross receipts from operations to its net operating costs, as shown in its final statement of accounts for the preceding fiscal year.

VI. The process for development of the plan shall include an opportunity for members of the public in the trust's service area to provide input into development of the plan and comment upon the trust's proposed plan.

7:32-f Community Needs Assessment. Every health care charitable trust shall, either alone or in conjunction with other health care charitable trusts in its community, conduct a community needs assessment to assist in determining the activities to be included in its community benefits plan. The needs assessment process shall include consultation with members of the public, community organizations, service providers, and local government officials in the trust's service area, in the identification and prioritization of community needs that the health care charitable trust can address directly, or in collaboration with others. The community needs assessment shall be updated at least every 3 years.

7:32-g Notice to Director of Charitable Trusts and Public; Administrative Fine.

I. Every health care charitable trust shall submit its community benefits plan to the director of charitable trusts on an annual basis no later than 90 days after the start of the trust's fiscal year. The trust and the director of charitable trusts shall make all community benefits plans available to the public and, where practicable, shall place the reports on an internet site or web page. Every health care charitable trust shall at least annually provide notice to the public of the availability and process for obtaining a copy of its community benefits plan and shall prominently display such notice in its lobby, waiting rooms, or other area of public access.

II. An extension of time for filing the community benefits plan may be granted by the director.

III. The director may impose an administrative fine upon a charitable organization that violates any provision of RSA 7:32-g, I, in an amount not to exceed \$1,000 plus attorneys fees and costs for each such violation.

7:32-h Charity Care. The provision of charity care may be included in a community benefits plan by a health care charitable trust only to the extent that it:

I. Does not include any sums identified as bad debt, a receivable or revenue by the trust in accordance with generally accepted accounting principles.

II. Is provided in accordance with a written policy which is available to the public, which allows any individual to make application and receive a prompt decision on eligibility for and the amount of charity care, and notice of which is prominently displayed in the trust's lobby, waiting rooms, or other area of public access or otherwise is provided to service applicants and recipients who are served in their own homes or in locations other than a facility of the trust.

7:32-i Enforcement. Nothing in this subdivision shall derogate from authority of the attorney general, or the rights of others, provided by common law or other statute.

7:32-j Exemption. If the total equalized assessed value of the real estate assets of a health care charitable trust do not exceed \$1,000,000, the trust shall have no obligation to comply with the provisions of this subdivision. In addition, those health care charitable trusts for which compliance would be a financial or administrative burden, according to criteria established and administered by the director of charitable trusts, may request an exemption from the provisions of this subdivision. An exemption, if granted, shall be valid for 3 years from the date of issuance unless it is revoked by the director of charitable trusts and written notice of such revocation is provided to the health care charitable trust.

2 Legislative Review. The provisions of this act shall be subject to further legislative review and amendment based on the results of the statewide health plan process to be implemented during the fiscal year ending June 30, 2000 and the initial reports by the health care charitable trusts in compliance with this act.

3 Effective Date. This act shall take effect January 1, 2000.

**1999-1103s**

#### AMENDED ANALYSIS

This bill requires that health care charitable trusts develop community benefits plans each fiscal year which shall be submitted to the director of charitable trusts; and provides what shall be included in such plans. Health care charitable trusts shall also conduct community needs assessments in order to help determine the activities to be included in the community benefits plans. Health care charitable trusts with total equalized assessed value of real estate assets not exceeding \$1,000,000 are exempt from this bill's provisions. In addition, health care charitable trusts for whom compliance would be a financial or administrative burden may be granted an exemption from the bill's requirements. The bill also authorizes the director of charitable trusts to assess an administrative fine upon charitable trusts for failure to comply with certain requirements.

**SENATOR WHEELER: TAPE CHANGE** reamended it, but it is coming forward as a floor amendment because it got tabled accidentally. While it is being passed out let me just refresh your mind about SB 69. Community benefits are the un-reimbursed goods and services provided by health care institutions that address community identified health needs and concerns, particularly of those who are at risk of not receiving health services due to medical, financial or other barriers. Senate

Bill 69 list examples of community benefits. Among them are free care, financial or any kind of support of public health programs, funds or resources that contribute to the health care needs of the area or promote or support a healthier community, support of medical research, education and training. In addition to improving the overall health status of the community, these services create an important safety net for the uninsured and vulnerable populations in New Hampshire who would otherwise go untreated. A few things that SB 69 does is reports required by SB 69 will enable institutions to compare their own community benefit activities with those of other institutions and organizations. Senate Bill 69 allows hospitals and other health care charitable trusts to better share information with the public about their community benefit activities. Senate Bill 69 ensures that every health care charitable trust conduct a community needs assessment in consultation with members of the public, community organizations, service providers and local government officials in the trust service area. Senate Bill 69 encourages collaboration between institutions providing health care services. Through public input into the need assessment and the annual community benefits plan, health care charitable trusts will be better able to target resources to areas of greatest need. I want to mention two things that SB 69 does not do. Senate Bill 69 does not require hospitals or other health care charitable trusts to provide any specified amount or type of community benefit. Also, SB 69 by virtue of the exemption provision, which is on page four of your amendment, and this is what was not printed in the calendar before, but has been adopted by the Public Institutions, Health and Human Services Committee. Senate Bill 69 does not place an undue burden on smaller health care charitable trusts to comply with assessment and reporting requirements because it says, "If such requirements would create financial or administrative hardships, institutions may apply for an exemption or partner with another organization to assessment community needs." We further refined that to make it clear that we were not in any way trying to place an undue burden on home healthcare institutions and other groups where everything that they do is a community benefit, so we said, if the health care charitable trust has real estate asset where the total equalized value does not exceed \$1 million, they have no obligation to comply with the provisions of this statute. Other states with free care or community benefit laws are California, Georgia, Indiana, Massachusetts, Minnesota, New York, Oklahoma, Pennsylvania, Rhode Island, Texas, Utah and West Virginia. We are not trying to do something that is totally different here, we are trying to do something really good for health care in New Hampshire.

SENATOR BELOW: Senator Wheeler, would you agree as the prime sponsor and chair of the committee that is reporting this bill, that it is not the intent of this bill to suggest that compliance with this act in and of itself and without regard to the substance of community benefits and charitable activities, should cause or constitute the charitable use of real estate for purposes of property tax exemptions?

SENATOR WHEELER: Yes I would, Senator Below. It was never the intent of this legislation to deal with the whole issue of how property tax exemptions are determined. I would bring your attention to line three of page four of the amendment. There is language there that states, "Nothing in this subdivision shall derogate from authority of the attorney general or the rights of others provided by common law



where other statutes," which could conceivably include in the concept here, RSA 72:23 and RSA 72:23-L which are the real estate provisions, the real estate tax provisions and also the charitable trusts provisions. This is something that we will work to clarify if the bill moves forward to the House. I will endeavor to get language such as you stated into the bill.

**SENATOR BELOW:** Just to clarify that last point and make it perfectly clear. So you would agree that it is not the intent of this act to neither derogate from nor man by implication or otherwise RSA 72 for the common law relative to real estate tax exemptions?

**SENATOR WHEELER:** I do agree to that.

**SENATOR GORDON:** I was one that had a problem with this bill before and I just wanted to say that the exemption in regard to the \$1 million level for real estate held by trusts, automatic exemption, I think, even though I would like to see all Visiting Nurses Association exempted, I think that this exemption probably in the spirit of good natured compromise, serves the purpose and I support the bill.

**SENATOR KRUEGER:** I rise in opposition. I have felt from the beginning when being introduced to this bill, although I certainly appreciate the amendment, I think that helps resolve some of my concerns that charitable trusts and organizations are set up primarily with boards that oversee that they adhere to what it is that they are set up specifically to do. I would hate to think that something like this, which is in my mind, a policing mechanism that is checking organizations as to what their commitment really is, could interface with those organizations and ultimately we'll end up with less community service. So I have concerns, and as a former vice president of the Crotched Mountain Foundation, I could only think how possibly this could negatively impact on certain organizations. I thank you.

**Floor Amendment adopted.**

**Ordered to third reading.**

### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Senate Bills sent down from the Senate:

**SB 17**, relative to funeral arrangements.

**SB 19**, extending the reporting date of the state substance abuse treatment delivery system committee.

**SB 91**, designating segments of the Cold River as protected under the rivers management and protection program.

**SB 119**, relative to the withdrawal of a pupil from school.

### **REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bills:

**HB 78**, relative to the counting of votes when the moderator is disqualified.

**HB 203**, making impaired boating laws consistent with driving while intoxicated laws.

**HB 210**, reinstating the corporate charter of C. A. B. Real Estate, Inc.

**HB 268**, relative to the adoption of rescission of the official ballot form of meeting.

**HB 327**, allowing municipal governing bodies to enter into lease agreements for equipment.

**HB 365**, establishing a committee to study the current practice of posting roads and its effect on the economy.

**HB 447**, repealing the laws prohibiting certain promotional games.

**SB 19**, extending the reporting date of the state substance abuse treatment delivery system committee.

**SB 119**, relative to the withdrawal of a pupil from school.

Senator D'Allesandro moved adoption.

**Adopted.**

### HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 41**, correcting a reference in provisions relating to hunting and fishing licenses for members of the armed services.

### SENATE CONCURS WITH HOUSE AMENDMENT

**SB 41**, correcting a reference in provisions relating to hunting and fishing licenses for members of the armed services.

Senator Disnard moved concurrence.

**Adopted.**

### HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 160**, establishing a committee to study and identify or establish the duties of the fish and game commission.

### SENATE CONCURS WITH HOUSE AMENDMENT

**SB 160**, establishing a committee to study and identify or establish the duties of the fish and game commission.

Senator Disnard moved concurrence.

**Adopted.**

### ANNOUNCEMENTS

#### RESOLUTION

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time and that the bills ordered to third reading be read a third time by this resolution and all titles be the same as adopted and that they be passed at the present time.

**Adopted.**

### LATE SESSION

Senator Cohen moved that the Senate be in recess for the purpose of House Messages, Introduction of bills, Enrolled Bills Reports and amendments, and that when we adjourn, we adjourn until Thursday, May 13, 1999 at 10:00 a.m.

### Third Reading and Final Passage

**SB 32**, relative to an employer exemption under the unemployment compensation laws.

**HB 58**, establishing a committee to study open adoption in New Hampshire.

**HB 67**, relative to termination of parental rights upon a finding of either child abuse or commission of certain criminal offenses.

**SB 69-L**, relative to healthcare charitable trusts and community benefits.

**SB 90**, establishing a committee to study and investigate the needs for small business loans to pay for technical improvements for persons working at home.

**SB 230**, relative to interstate school districts.

**HB 230**, clarifying the waste reduction goals for the state of New Hampshire.

**HB 240**, prohibiting the reintroduction of wolf populations to the state of New Hampshire.

**HB 402**, establishing a committee to study methods to promote the use of renewable energy sources.

**HB 426**, relative to clean indoor air in state buildings.

**HB 435**, relative to disclosure by sellers of consumer goods and services.

**HB 442**, relative to charitable gift annuities.

**HB 513**, relative to approved permissible fireworks.

**HB 530**, establishing a committee to review the policies and procedures of the joint health council.

**HB 556-FN**, relative to transporting hazardous waste.

**HB 557-FN**, relative to hazardous waste permitting and container identification.

**HB 592**, creating a study committee regarding requirements for and usage of methyl t-butyl ether.

**HB 620-FN**, relative to election of vested deferred retirement status for inactive members of the retirement system.

**HB 634-FN**, eliminating the requirement that retirement system disability recipients notify the board of trustees of unreduced social security disability benefits.

**HB 638-FN**, authorizing a limited license for certain travel agents.

**HB 664**, establishing a study committee on rights of ownership to cemetery plots.

**HB 671**, adding a member to the council on resources and development.

**HB 672-FN-A-L**, relative to creating a master plan for Hampton Beach and Hampton State park to deal with growth.



**HB 686-FN**, defining the state heritage collections committee's responsibilities and the process for acquiring or disposing of items and collections.

**Adopted.**

**In recess.**

**Out of Recess.**

### **REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bills:

**HB 92**, exempting permanently disabled veterans from the requirement of reestablishing their disability status for the division of motor vehicles every four years to prove eligibility for special license plates.

**HB 214**, changing the membership of and extending the reporting date for the committee to study women's health care.

**HB 358**, relative to the term of office for members of the state board of education.

**HB 383**, relative to the authority of the department of environmental services to assign air pollution allowances and credits.

**HB 403**, relative to speed limits on Turtle Town Pond in Concord.

**HB 515**, extending the indemnification of persons providing clinical services to the department of health and human services.

**HB 710**, relative to expanding the availability of lifetime licenses for hunting and fishing.

**SB 91**, designating segments of the Cold River as protected under the rivers management and protection program.

**Senator D'Allesandro moved adoption.**

**Adopted.**

**1999-1178-EBA**

**03/10**

### **Enrolled Bill Amendment to HB 79**

The Committee on Enrolled Bills to which was referred HB 79

**AN ACT** relative to reports to the bank commissioner and to safe deposit box openings.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

### **FOR THE COMMITTEE**

### **Explanation to Enrolled Bill Amendment to HB 79**

This enrolled bill amendment corrects a reference that was omitted from a previous amendment.

### **Enrolled Bill Amendment to HB 79**

Amend section 1 of the bill by replacing line 3 with the following: bank commissioner copies of reports required by the provisions of section 208.62 of the Federal

**Senator Trombly moved adoption.**

**Adopted.**

**1999-1179-EBA****03/09****Enrolled Bill Amendment to HB 672-FN-A-LOCAL**

The Committee on Enrolled Bills to which was referred HB 672-FN-A-LOCAL

AN ACT relative to creating a master plan for Hampton Beach and Hampton State park to deal with growth.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE****Explanation to Enrolled Bill Amendment to HB 672-FN-A-LOCAL**

This enrolled bill amendment changes certain references from Hampton state park to Hampton Beach state park.

**Enrolled Bill Amendment to HB 672-FN-A-LOCAL**

Amend the title of the bill by replacing it with the following:

AN ACT relative to creating a master plan for Hampton Beach and Hampton Beach state park to deal with growth.

Amend section 1 of the bill by replacing line 2 with the following: Hampton Beach and Hampton Beach state park area, the commissioner of resources and economic

**Senator Trombly moved adoption.**

**Adopted.**

**1999-1183-EBA****04/09****Enrolled Bill Amendment to HB 230**

The Committee on Enrolled Bills to which was referred HB 230

AN ACT clarifying the waste reduction goals for the state of New Hampshire.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE****Explanation to Enrolled Bill Amendment to HB 230**

This enrolled bill amendment corrects the amending language in section 2 of the bill.

**Enrolled Bill Amendment to HB 230**

Amend section 2 of the bill by replacing line 2 with the following: Amend the introductory paragraph of RSA 149-M:29, II to read as follows:

**Senator Trombly moved adoption.**

**Adopted.**

**1999-1190-EBA****04/09****Enrolled Bill Amendment to HB 556-FN**

The Committee on Enrolled Bills to which was referred HB 556-FN

AN ACT relative to transporting hazardous waste.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

**Explanation to Enrolled Bill Amendment to HB 556-FN**

This enrolled bill amendment deletes a repetitive word.

**Enrolled Bill Amendment to HB 556-FN**

Amend RSA 147-A:6, V(c) as inserted by section 4 of the bill by replacing line 3 with the following:

RSA 147-A, or any rules adopted by the commissioner of the department of safety pursuant

**Senator Trombly moved adoption.**

**Adopted.**

**1999-1107-EBA**

**Enrolled Bill Amendment to SB 17**

The Committee on Enrolled Bills to which was referred SB 17

AN ACT relative to funeral arrangements.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

**Explanation to Enrolled Bill Amendment to SB 17**

This enrolled bill amendment corrects a typographical error and inserts a missing word.

**Enrolled Bill Amendment to SB 17**

Amend section 2 of the bill by replacing line 6 with the following: *designated agent* after certifying the fact of death and completing the death record by hand or other

Amend section 8 of the bill by replacing line 3 with the following:

I-a. Makes funeral arrangements, unless such person is a funeral director, next-of-kin as defined in

**Senator Trombly moved adoption.**

**Adopted.**

**1999-1214-EBA**

**08/01**

**Enrolled Bill Amendment to HB 302**

The Committee on Enrolled Bills to which was referred HB 302

AN ACT relative to paint ball guns.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

**Explanation to Enrolled Bill Amendment to HB 302**

This enrolled bill amendment makes RSA 193:13, II to conform to existing law.

**Enrolled Bill Amendment to HB 302**

Amend section 2 of the bill by replacing line 2 with the following:



II. Any pupil may be expelled from school by the local school board for gross misconduct, or for neglect or

**Senator Trombly moved adoption.**

**Adopted.**

**1999-1221-EBA**

**08/10**

**Enrolled Bill Amendment to HB 435**

The Committee on Enrolled Bills to which was referred HB 435

AN ACT relative to disclosure by sellers of consumer goods and services.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE**

**Explanation to Enrolled Bill Amendment to HB 435**

This enrolled bill amendment makes a technical correction.

**Enrolled Bill Amendment to HB 435**

Amend section 3 of the bill by replacing line 2 with the following:

Added. Amend RSA 361-B:2-a, I to read as follows:

**Senator Trombly moved adoption.**

**Adopted.**

**LATE SESSION**

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, and that when we adjourn we adjourn until Thursday, May 13, 1999 at 10:00 a.m.

**Adopted.**

**Adjournment.**

*May 13, 1999*

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by Father Aime Boisselle, Senate Guest Chaplain.

*O Lord, You are the God of Truth and we take refuge in You. You touch our lives with Your mercy and care. You are the Creator of life and we implore You to grant Your special blessings upon us. Lift our prayers, O Lord, and renew our energy and remind us that You are always with us. Lift our hearts to You so that we may know there is always room for growth and wisdom. We pledge ourselves to develop a loving and caring concern for our neighbors, our brothers and sisters. The pathway of tomorrow is sometimes hidden from us. Yet with Your grace, the impossible will unfold as possible. Our weakness will become our strength. Our vision will enlarge. It is an awesome task that these men and women have taken upon themselves. May the laws they enact always be based on sound values. And we are especially filled with gratitude that*

*they have accepted to be ministers of the public for the people of the state of New Hampshire. They have given their time and talents and energies to serve us. May they be blessed, and grant them insight and understanding. Their first concern is always the welfare of others. Teach them and help them to be always unselfish and in the pursuit of the common good. For this, we pray, O Lord, our God. Amen.*

Senator Russman led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS

### REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bills:

**HB 402**, establishing a committee to study methods to promote the use of renewable energy sources.

**HB 530**, establishing a committee to review the policies and procedures of the joint health council.

**HB 558**, relative to solid waste management.

**Senator D'Allesandro moved adoption.**

**Adopted.**

**In recess.**

**Senator Larsen in the Chair.**

## COMMITTEE REPORTS

**SB 191**, relative to the New Hampshire higher educational and health facilities authority. Education Committee. Vote 9-0. Ought to pass with amendment, Senator Larsen for the committee.

**1999-1062s**

**04/10**

### Amendment to SB 191

Amend the bill by replacing section 19 with the following:

19 Effective Date. This act shall take effect upon its passage.

**SENATOR LARSEN:** Senate Bill 191 updates the statutory language governing New Hampshire Higher Educational and Health Facilities Authority. In the first instance it changes the name to one with fewer syllables. The new name will be the New Hampshire Health and Education Facilities Authority, slightly easier to say. The bill broadens the authorities group of potential borrowers to include a wider range of not for profit education and health care institutions. For instance, this bill would allow groups such as the Red Cross, the Audubon Society, Boy's and Girl's Scouts, YMCA's and Museums to borrow. The bill would also enable the authority to issue bonds at lower rates to finance working capital in addition to capital that is associated with the specific projects. Senate Bill 191 deletes the existing restriction on the issuance of bonds for private secondary schools and makes other technical changes to reduce the number of directors necessary for a quorum and allow for a telephonic conferencing. **TAPE CHANGE** is a high value to the state and financing higher education. The authorities responsible for millions of dollars in bonds issued over the last thirty years for student loans and other educational purposes. The authority requested this bill to bring the statutes into line with their evolving mission of providing low cost fi-

nancing for higher education and health facilities. This authority deserves the enthusiastic support of the Senate and I ask for your vote on ought to pass.

**Amendment adopted.**

**Ordered to third reading.**

**HB 340**, establishing a committee to study mercury source reduction and recycling issues. Environment Committee. Vote 5-0. Ought to Pass, Senator Cohen for the committee.

**SENATOR COHEN:** This bill was introduced at the request of the Department of Environmental Services due to the importance of reducing mercury releases to the environment. Mercury is a highly persistent and toxic pollutant that accumulates in the food chain. It has a variety of human health effects including birth defects, brain damage, elevated blood pressure, abnormal heart rhythms, low grade intermittent fevers, gastrointestinal irritation, muscle degeneration and even death. Like 39 other states, New Hampshire has issued a fresh water fish consumption advisory due to mercury levels in fish. For this and many other reasons, mercury contamination was among the top 20 environmental risks identified by the New Hampshire comparative risk project in 1997. Mercury is not just a health issue, it is also an economic issue. The Department of the Interior and the Department of Commerce have estimated that the fishing expenditures in the state equal approximately \$329 million annually and the American Sports Fishing Association has estimated that these expenditures support about 7700 jobs in New Hampshire. Further, the Departments of Interior and Commerce have estimated that tourism from wildlife watching in New Hampshire contributed to approximately \$282 million annually. Consequently, mercury deposition is a significant environmental, public health and economic concern for New Hampshire; therefore, I urge my colleagues to vote ought to pass on this bill. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 431**, establishing a committee to study methods and processes necessary to retain the traditional uses of White Mountain National Forest land, the impact of any change in designation, and relative to promoting the continual multiple use management of such land. Environment Committee. Vote 5-0. Ought to pass with amendment, Senator Below for the committee.

**1999-1123s**

**08/09**

**Amendment to HB 431**

Amend the title of the bill by replacing it with the following:

**AN ACT** establishing a committee to study methods and processes necessary to retain and enhance uses of the White Mountain National Forest, the impact of any change in designation or uses, and relative to promoting the continual multiple use management of such land.

Amend the bill by replacing section 1 with the following:

1 Committee Established. There is established a committee to study the advantages of and methods and processes necessary for the retention and enhancement of uses of the White Mountain National Forest, consistent with its continued use as a national forest.



Amend the bill by replacing section 3 with the following:

3 Duties. The committee shall explore any and all methods necessary to retain multiple use management of White Mountain National Forest land, and the impact of any considered change in designation or uses of the White Mountain National Forest.

**1999-1123s**

#### AMENDED ANALYSIS

This bill establishes a committee to study the advantages of and methods and processes necessary for the retention and enhancement of uses of the White Mountain National Forest, consistent with its continued use as a national forest. The committee will also explore the impact of any considered change in designation or uses of the White Mountain National Forest.

This bill also requires the commissioner of the department of resources and economic development to consult and work with the United States Department of Agriculture Forest Service to promote continual multiple use management of White Mountain National Forest land.

SENATOR BELOW: I rise in support of HB 431 as amended. This bill establishes a committee to study methods and processes necessary to retain and enhance uses of the White Mountain National Forest, the impact of any change in designation or uses, and relative to promoting the continual multiple use management of such land. The bill provides an opportunity for the general court to become actively involved in issues relating to the White Mountain National Forest, which comprises over 700,000 acres in New Hampshire. As the White Mountain National Forest revises its land and resource management plan, it is important that the state and the legislature be involved. The White Mountain National Forest provides a range of benefits to the citizens of New Hampshire, recreation, timber harvesting, wildlife management, watershed protection and wilderness all have a place in the National Forest. With these great economic and environmental benefits to the state, it is only appropriate for the general court to be actively involved in this important statewide matter. I urge support of the committee vote of 5-0 for ought to pass. Thank you.

**Amendment adopted.**

**Ordered to third reading.**

**SB 132**, requiring the removal of the telecommunications tower on Mount Kearsage. Environment Committee. Vote 6-0. Rereferred to Committee, Senator Below for the committee.

SENATOR BELOW: I rise in support of the committee recommendation for rereferral. As many of you know, SB 132 is a highly contested issue. There are many sides to this debate and many concerned parties, including members of the public, Department of Resources and Economic Development, the New Hampshire State Troopers, US Cellular and our state government testified on the bill. The telecommunication tower on Mount Kearsage was constructed without proper notification and without providing the towns surrounding Mount Kearsage an opportunity to comment on this important land use decision on a state park. This is a situation that needs to be addressed, on the other hand, the tower does provide important public safety needs and one of the key questions is whether the public safety issues can be adequately addressed with a smaller tower. Rereferring this bill would give the members of the committee the opportunity to visit the summit of Mount Kearsage over the

summer and we invite any other Senators who would like to join us on a hike to the summit to inspect the situation and we therefore...we have to get a little bit of a break in here somewhere; therefore, I urge the Senate's support of rereferral on this bill.

**SENATOR TROMBLY:** If you have a tour bus that goes up to the summit, I will gladly watch you all get on it. I just want to comment. The reason why I cosponsored this bill with Senator Below was because through the course of my campaign and campaigning in the town of Warner, it became very clear to me that the state of New Hampshire was completely derelict in its duty and obligation to listen to the citizens of this state relative to issues that impact on them directly. The reports to me relating to the erection of this tower were horrific. The state should never debase the public debate, should never ignore the will of the public in terms of their ability to simply communicate with their bureaucrats and that is what happened. There was a breakdown in communication because the bureaucrats refused to invite participation and public comment on this issue. I would have gladly seen this tower come down regardless of the cost, because the action of the state were so egregious and so violent of the civil rights of the people who live in that area that I think that whatever cost we had to bear to address that wrong we should do. I do rise in support of the committee report. I do think that it is a committee that I know will study this issue and will come out with a recommendation appropriate to remedy this wrong. I urge you to vote for rereferral, but I think that it is very important for you to know the reason why this legislation is sponsored. Thank you.

**Adopted.**

**SB 132 is rereferred to the Environment Committee.**

**HB 223**, relative to waiver of filing fees and petitions for candidates for federal offices. Executive Departments and Administration Committee. Vote 6-0. Inexpedient to Legislate, Senator Brown for the committee.

**SENATOR BROWN:** This bill would have eliminated the filing fees and petitions for candidates for federal office. These revenues help to offset the cost to the state of printing the candidate's names on the ballots. The committee unanimously felt that this is not a time to eliminate this fee and increase the cost to the state for printing ballots at a time when revenue streams are very important to the state, and we recommend this bill as inexpedient to legislate.

**Committee report of inexpedient to legislate is adopted.**

**HB 292**, relative to ballot procedures for constitutional amendments. Executive Departments and Administration Committee. Vote 4-0. Ought to Pass, Senator Roberge for the committee.

**SENATOR ROBERGE:** Mr. President and members of the Senate, this bill was generated out of the study committee looking into the adoption of part II, article 41, 72-a and 73-a of the constitution. The bill would require that constitutional questions shall include, along with the text of the question, the text of the article of the constitution as it is to be proposed to be amended. This will help to ensure that voters understand the constitutional question being asked, because the result of adopting the question would be printed with the question itself. The committee recommends ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 325**, prohibiting "cramming" in telecommunications billing. Executive Departments and Administration Committee. Vote 4-0. Ought to Pass, Senator D'Allesandro for the committee.

**SENATOR D'ALLESANDRO:** This bill prohibits "cramming" in telephone bills. Cramming is when there are submitted or included unauthorized misleading or deceptive charges in telephone bills. Customers may not realize that these charges are for products or services that they did not receive or receive in full. This is a matter of consumer protection. The bill requires service providers to register with the Public Utilities Commission if they are not public utilities. In the age of competition, some utilities using building services, and this will let the PUC track these entities, that may try to add unauthorized charges in the bills. The bill also establishes an administrative fine should a company engage in cramming. The committee recommends this bill as ought to pass.

**Adopted.**

Senator D'Allesandro offered a floor amendment.

**1999-1238s**

**03/01**

### **Floor Amendment to HB 325**

Amend RSA 378:46, I as inserted by section 1 of the bill by replacing it with the following:

I. Upon determining that it is technically and economically feasible, the commission shall require local exchange carriers to permit a customer to place a block on an account that prevents any non-telecommunications-related charges that do not originate from the customer's local exchange or long distance carrier or affiliate from appearing on the customer's local exchange carrier bill.

**SENATOR D'ALLESANDRO:** We are introducing a floor amendment. It was agreed to by the sponsors of the legislation. It just changes a couple of words and keeps continuity in this legislation. I would hope that you would accept this floor amendment as distributed. What the changes are in this floor amendment are, is after the words "long distance carrier" it adds "or affiliate" those two words are what is changed.

**Floor Amendment adopted.**

**Ordered to third reading.**

**SB 217-FN**, relative to nonresident real estate brokers doing business in this state. Executive Departments and Administration Committee. Vote 5-0. Ought to pass with amendment, Senator D'Allesandro for the committee.

**1999-0964s**

**10/01**

### **Amendment to SB 217-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to real estate brokers of other jurisdictions doing business in this state.

Amend the bill by replacing section 1 with the following:

1 New Section; Practice by Brokers of Other Jurisdictions. Amend RSA 331-A by inserting after section 22 the following new section:

331-A:22-a Practice by Brokers of Other Jurisdictions.



I. No broker licensed in another jurisdiction shall list, offer, attempt, or agree to list real estate in this state for sale or lease unless the broker has acquired a license pursuant to RSA 331-A:22.

II. A broker licensed in another jurisdiction representing a buyer or tenant who is not licensed under this chapter may be actively involved in a real estate transaction in this state only if the broker has entered into a cooperative brokerage agreement with a broker licensed under this chapter who shall represent the buyer or tenant according to this chapter.

III. No broker licensed in another jurisdiction who is not licensed under this chapter may act as a broker with a buyer or tenant unless the broker is working on behalf of and under the license of a broker licensed under this chapter.

**1999-0964s**

#### AMENDED ANALYSIS

This bill requires a real estate broker licensed in another jurisdiction doing certain real estate business in this state to have a license under the real estate practice act or to work under a New Hampshire licensed broker.

**SENATOR D'ALLESANDRO:** This bill is intended to formalize the relationship between out of state realtors and New Hampshire realtors. This bill would require out of state realtors to either obtain a New Hampshire real estate license or work in conjunction with a licensed New Hampshire realtor in order to conduct business in the state. This issue is a matter of public protection. The New Hampshire Real Estate Commission does not have the authority to intervene in cases where realtors are not licensed in New Hampshire. This would ensure that consumers would have the liability protection of an agent licensed in New Hampshire who would be working with an out of state agent. The committee recommends this bill as ought to pass as amended.

**Amendment adopted.**

**Ordered to third reading.**

**SB 226-FN**, relative to the real estate practice act and the powers and duties of the real estate commission. Executive Departments and Administration Committee. Vote 5-0. Rereferred to Committee, Senator Trombly for the committee.

**SENATOR TROMBLY:** This bill deals with the real estate practices act. At the hearing, basically there were 12 amendments offered to this bill. The committee felt that in order to examine those amendments and the bill itself, we would like to rerefer it and send it back to committee and study it. I ask for your support. Thank you.

**Adopted.**

**SB 226-FN** is rereferred to the Executive Departments and Administration Committee.

**Recess.**

**Senator Larsen in the Chair.**

**HB 245-FN**, relative to fees and appropriations to the division of safety services. Finance Committee. Vote 7-0. Ought to Pass, Senator Klemm for the committee.

**SENATOR KLEMM:** This bill was referred to Senate Finance by the Senate Transportation Committee. This bill would result in a shift of \$588,000

of general fund revenues being deposited in the dedicated special navigation safety fund. What this bill does not do is cause the unrefunded road toll revenue to be shifted from the general fund to the dedicated special navigation safety fund. The Finance Committee recommends HB 245 as ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 62-FN-A-L**, relative to the acquisition of Umbagog Lake Campground in Cambridge, New Hampshire, and making an appropriation therefor. Finance Committee. Vote 7-0. Ought to Pass, Senator F. King for the committee.

SENATOR F. KING: This bill was referred to the Senate Finance Committee by the Senate Wildlife and Recreation Committee. This bill authorizes \$600,000 in general fund bonds for the acquisition of Umbagog Lake Campground, based on standard capital appropriation assumptions, it is estimated that this bill would increase state general fund expenditures by \$4,404 in fiscal year 2000 and by \$24,973 in fiscal year 2001 and \$40,628 in fiscal year 2002 and \$39,578 in fiscal year 2003. The bill also states that DRED will operate the campground under agreement with a trust for public lands until the sale is final, and that once this property is purchased, it will be managed by DRED. Expenditures and revenues will become a charge to the park fund. The department estimates revenues to be \$68,000 in fiscal year 2000, \$72,000 in 2001, \$75,000 in 2002 and \$80,000 in 2003. Expenditures are estimated to be \$68,000 in 2000, \$47,000 in 2001, \$49,345 in 2002 and \$84,000 in 2003. There is an assumption being made that the funding for this acquisition will probably come from federal dollars. There are several pieces of legislation presently in discussion in congress for funds for this purpose. The support for those bills seems to be much more across the party lines than it has been in the past. The Finance Committee supports the Senate policy position and recommends SB 62 as ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 88-FN**, relative to penalties for third driving while intoxicated offenses. Finance Committee. Vote 5-2. Ought to Pass, Senator F. King for the committee.

SENATOR F. KING: This was referred to the Finance Committee from the Senate Judiciary Committee. The bill changes the penalty for a third DWI from a period of not less than 30 consecutive 24-hour periods to a period of not less than one year. Senate Bill 88 will cause a fiscal impact on the corrections system including prosecution, incarceration, probation patrols. The administrative office of the courts indicated that the courts would see an increase caseload. The judicial council will see increases in indigent defense costs and the counties will see increases in cost as a result of increased sentences of up to one year in county facilities. The judicial council was unable to predict the actual number of occurrences, so no actual cost can be determined; however, there are significant numbers of third offense DWI cases, which not only require the appointment of counsel when none were previously required. Assuming the cases are handled by the public defender and contracted attorney's, there would be a flat fee of \$220 per case or \$330 for a jury trial. There would also be additional cost for blood testing and lab work. The Depart-

ment of Corrections was unable to predict how many individuals would have their sentences extended as a result of the increase in the minimum sentence. Individuals sentenced up to one year would serve their term in a county facility. The cost of incarceration in a state facility in fiscal year 1998 was \$19,029. The Finance Committee supports the Senate's policy position and recommends SB 88 as ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 131-FN-A**, appropriating funds to the office of travel and tourism. Finance Committee. Vote 7-0. Ought to pass with amendment, Senator Hollingworth for the committee.

**1999-1138s**

**08/09**

### **Amendment to SB 131-FN-A**

Amend the title of the bill by replacing it with the following:

AN ACT updating the name of the office of vacation travel to the office of travel and tourism in nonconforming RSA sections.

Amend the bill by deleting section 1 and renumbering the original sections 2 and 3 to read as 1 and 2, respectively.

**1999-1138s**

### **AMENDED ANALYSIS**

The bill changes the name of the office of vacation travel to the office of travel and tourism in certain RSA sections not yet updated.

**SENATOR HOLLINGWORTH:** This bill was amended by the Finance Committee. The Finance Committee removed the appropriation at the request of the department. Updating the name in certain RSA sections not yet updated to the office of travel and tourism. The Finance Committee recommends SB 131 as amended ought to pass.

**Amendment adopted.**

**Ordered to third reading.**

**SB 178-FN-A**, relative to appropriations to the port authority for dredging projects. Finance Committee. Vote 7-0. Ought to Pass, Senator Hollingworth for the committee.

**SENATOR HOLLINGWORTH:** This bill was referred to the Finance Committee from the Environment Committee. This bill charges projects described as describing language for the port of Portsmouth expansion. The port expansion project has an \$18 million nonlapsing appropriation attached to it. In addition, there is a footnote language describing how the funds can be expanded. The balance of the appropriation of June 30, 1998 was over \$13 million. This bill as amended allows for \$1 million of the appropriations to be used for dredging projects including associated mitigation to maintain channels and harbors with prior approval of the Capital Budget Overview Committee. The Finance Committee recommends SB 178 ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 183-FN-A**, establishing a New Hampshire health access corporation and continually appropriating a special fund and making an appropriation therefor, requiring the department of health and human services to



make a biennial report on the health status of New Hampshire residents, relative to certain transfers to the health care fund, and relative to rates for pharmaceutical services. Finance Committee. Vote 5-2. Ought to Pass, Senator Squires for the committee.

**SENATOR SQUIRES:** This bill has returned from Senate Finance. It is actually four amendments that were placed into one bill. Part one, is an appropriation of \$250,000 which establishes a private nonprofit corporation to promote and hopefully, eventually, make available to the 110,000 people in New Hampshire that don't have health insurance. Two hundred and fifty thousand dollars isn't going to accomplish that task, but it is a start. It sets us down the road eventually of having something similar to the Healthy Kids Program, which is for kids, this is trying to do the same thing for adults. The second thing that the bill does is to require the Department of Health and Human Services to present to us a report every two years on the state of health in New Hampshire. We spend a great deal of money and we should know if we are getting better, health wise. This is similar as to what the state of Vermont does. Over time you see trend lines and you can begin to understand if these dollars are in fact doing anything. The third thing that the bill does is to allow the recovery of Medicaid dollars to be deposited into the health care fund, which is as we have pointed out many times, is in a sad state of depletion. Currently its obligations exceed the ability of the fund to meet them by interest payments. So unless we do something, the fund will continue to diminish. Then finally, the bill addresses a problem that is very important to the cities and towns, which says that when they buy pharmaceuticals, they won't pay any more than is charged to the Department of Health and Human Services under the Medicaid program. So if a community is the last resort of public support of paying for someone's medical bills, they will do so at the same rate. I ask your support of this bill. Thank you.

**Question is on the motion of ought to pass.**

**A roll call was requested by Senator Trombly.**

**Seconded by Senator Cohen.**

**The following Senators voted Yes: F. King, Gordon, Fraser, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Squires, Larsen, J. King, Russman, D'Allesandro, Wheeler, Hollingworth, Cohen.**

**The following Senators voted No: Johnson, Roberge, Francoeur, Krueger, Brown, Klemm.**

**Yeas: 17 - Nays: 6**

**Senator Pignatelli Rule #42.**

**Adopted.**

**Ordered to third reading.**

**SB 189-FN**, relative to the establishment of a civil rights act. Finance Committee. Vote 7-0. Ought to pass with amendment, Senator Hollingworth for the committee.

**1999-0959s**

**01/09**

#### **Amendment to SB 189-FN**

Amend RSA 354-B:2 as inserted by section 1 of the bill by replacing it with the following:

354-B:2 Civil Action by Attorney General.

I. Whenever the attorney general has probable cause to believe that any person has violated any provision of this chapter, the attorney general may bring a civil action for injunctive or other appropriate equitable relief.

II. The civil action brought by the attorney general shall be filed in the superior court or, in the case of a minor, either in superior court or the district court in the county or judicial district where the alleged violator resides or where the alleged conduct occurred.

III. Testimony given during civil proceedings held under this chapter by a person alleged to have violated any provision of this chapter shall not be admissible in a criminal proceeding against that person when the criminal proceeding is based on the same event.

SENATOR HOLLINGWORTH: This bill was referred to Finance by the Judiciary Committee. Senate Bill 189 requires the Department of Justice to enforce a civil rights act. The department stated any increased cost can be assumed within their existing budget. Senate Finance amended this bill to add the "civil rights act" brought by the attorney general should be filed in the Superior Court, or in the case of a minor, either in Superior Court or the district court in the county or judicial district where the alleged violator resides, or where the alleged conduct occurred. The Finance Committee recommends SB 189 as amended ought to pass.

SENATOR PIGNATELLI: I rise to thank the Finance Committee for giving this bill such a strong support. I draw your attention to a newspaper article that I photocopied for you out of today's Concord Monitor. "Parents voice concern over anti-Semitic slurs." But it is worse than that. What happened is three middle school students, these are middle school students that are 11 and 12 year old children, went about asking some of the children in the Keene Middle School, whether they were Jewish or not. They only asked students that weren't Jewish, but they had no way of knowing. If the students had said that they were Jewish, these middle school students were going to beat them up. I don't think that we can allow that kind of thing to exist in this state. I think that the state has to express its outrage when something like this goes on, either by children or by others, but for me, it is especially important for us to reach children when they start threatening other people and performing acts of violence against other kids. I think that by the time kids get to be adults, it is almost too late. They already have their biases and their philosophies in mind, but I think that when we can reach children and hold them accountable for their actions, I think that we are doing them a favor and in the future, our society a favor. I think that this bill will go a long way towards helping us as a state by expressing our outrage when acts like this that were committed in Keene, are committed in this state. I urge your strong support of SB 189. Thank you very much.

SENATOR FRANCOEUR: Senator Pignatelli, looking at the amendment, it says that the testimony given during the civil proceedings can't be used during the criminal proceedings. Why shouldn't they be admissible if they were good for one proceeding and not the other?

SENATOR PIGNATELLI: I think that this is a way for us to deal with it in a civil way rather than in a criminal way. To inflict penalties and injunctive relief without going through a criminal process.

SENATOR FRANCOEUR: If the act is egregious enough, why can't you use any of the testimony? It is not saying that you have to, but this says that you can't use any of it.

SENATOR PIGNATELLI: That is right. I don't believe that you should be able to use it if you are going through the civil procedure, and you are going to try and provide injunctive relief and other help to a victim and to stop a potential abuser from committing any more crimes, I believe that it is appropriate to have a civil proceeding before you have a criminal proceeding.

SENATOR GORDON: I rise to perhaps just give an explanation, because the amendment was added at my request. The issue is that if you have a civil proceeding, you have a different standard or a different burden of proof, and that burden of proof is that you have to prove by a preponderance of the evidence that someone is responsible or guilty of what they have been accused of. My concern that I had was that...and also the rules of evidence are very different in a civil proceeding. In a civil proceeding, a person could be called to testify as a witness. In a criminal proceeding you are not required, and in fact, you have a right under our constitution, not to testify in a criminal proceeding. So I was concerned that a civil proceeding would be brought, a person would be required to testify against themselves, and then ultimately, that testimony be used in a criminal proceeding. I did not want that to happen, so I requested that this amendment be included, and it was in fact included. I would just like to explain if I could, while I am standing, two other provisions in the amendment, which I think, improved the bill. Under the original bill that was passed out of the policy committee, all the attorney general's office needed to bring this cause of action was a suspicion that somebody had violated a provision of the chapter. I didn't think that was sufficient threshold. I requested that the burden be placed at probable cause, which means more likely than not that in fact that they engaged in this activity. I felt that that was an appropriate change and should be included in the bill. The other one was that in the original bill it said that these petitions would all be filed in the Superior Court. Most juvenile matters as you know are handled in the district court. I think that Senator Trombly agreed when we had our floor debate on this bill previously, that it would be appropriate under certain circumstances to bring a petition in the district court against juveniles. So what this does is say that the jurisdiction for juveniles can be in either the Superior Court or the District Court. So I just wanted to explain that the reason that this amendment was added having to do with not being able to use testimony, was actually to protect the defendants and not to deprive them of any rights.

SENATOR FRANCOEUR: Senator Gordon, I think that during the last testimony when this was on the Senate floor, I asked if these items that were in this RSA 345-B:1 were already in statute somewhere else, that threatening fiscal force, the threatening damage, trespass, intent to inflict harm. Are these already covered in statute somewhere else so that if an individual is doing these that they would already be able to be charged with these crimes?

SENATOR GORDON: The crimes that you listed are in fact in statutes as crimes. If in fact you satisfied the elements of those criminal acts, you could be prosecuted for those acts as crimes. What this statute allows is for the attorney general to go forward with a civil proceeding against an individual based upon their conduct to prevent them from engaging or to punish them for engaging in particular conduct which society feels is wrong. So the answer to your question is yes. Those types of crimes are available for prosecution on a criminal basis, this would be available for prosecution on a civil basis, and if in fact it was a child, they would not be found guilty of a crime, but rather would have a civil proceeding against them.



**SENATOR FRANCOEUR:** Getting to the civil action. If I had a 17-year-old son that mouths off to somebody, who would be liable to pay for the fine, him or the parents?

**SENATOR GORDON:** I think as the statute reads that they would be subject to a fine and they are not required to pay a fine. The court could find that they should pay a fine under the statute. I guess as is the case in criminal proceedings today in court, the judge is going to make a determination as to whether or not that person can pay the fine and whether or not that fine would be punitive and a proper remedy for the action. The answer I guess, having given you too long an answer is that I don't think that there is any answer to your question. The answer is that a fine can be imposed, and I would suspect that the judge would expect that the child would pay the fine. If the parents paid the fine for the child, I am not sure that you can protect against that.

**Recess.**

**Out of Recess.**

**Question is on the adoption of the amendment.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Fraser.**

**The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Roberge, Blaisdell, Fernald, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.**

**The following Senators voted No:**

**Yeas: 24 - Nays: 0**

**Amendment adopted.**

**Question is on the motion of ordering to third reading.**

**A roll call was requested by Senator Pignatelli.**

**Seconded by Senator Blaisdell.**

**The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Roberge, Blaisdell, Fernald, Squires, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.**

**The following Senators voted No: Francoeur, Krueger, Brown.**

**Yeas: 21 - Nays: 3**

**Adopted.**

**Ordered to third reading.**

**SB 195-FN-A, appropriating funds for sludge testing. Finance Committee. Vote 7-0. Ought to Pass, Senator F. King for the committee.**

**SENATOR F. KING:** This bill was referred to the Finance Committee by the Environment Committee. This bill transfers \$500,000 of an anticipated \$700,000 surplus from the Water Supply and Pollution Control State Aid Grant Program to a special non lapsing account to be used by the Department of Environmental Services for the sampling and analysis of randomly selected sludge samples. The department testified to the Environment Committee that the funding would be used to do lab work and analysis for sludge samples for the municipalities. These funds will be used to offset new costs to local communities

as a result to the adoption of the rules, thereby eliminating a claim of a 28-a issue. The Finance Committee supports the policy position and recommends this bill ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 198-FN**, relative to certification of persons installing and servicing propane gas and heating oil equipment. Finance Committee. Vote 7-0. Ought to Pass, Senator McCarley for the committee.

**SENATOR MCCARLEY:** This bill was referred to the Finance Committee by the Senate Executive Departments and Administration Committee. This bill establishes a voluntary certification program and establishes an advisory committee to provide advice to the fire marshal on issues relating to certification. The Department of Safety has stated that because the program is voluntary, they cannot estimate how many individuals may choose to become certified, therefore they were unable to determine the fiscal impact. The Finance Committee recommends SB 198 ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 205-FN**, expanding medical coverage to pay dental assistance for adults on medicaid. Finance Committee. Vote 7-0. Ought to Pass, Senator F. King for the committee.

**SENATOR F. KING:** Medicaid coverage for adults is currently limited to extractions to relieve pain and infections. For fiscal year 1998 this cost was \$171.41 each for approximately 3,000 individuals. The expanded service is expected to cost \$226.33 each for about 5,000 individuals. This cost is split by a 50/50 federal and general funds match. The estimated cost is \$222,472 in general funds for fiscal year 2000; \$1,184,977 each in fiscal year 2001 and 2002 and \$1,656,732 in fiscal year 2003. The Senate Finance Committee supports the full Senate's policy position of ought to pass.

**Question is on the motion of ought to pass.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator McCarley.**

**The following Senators voted Yes: F. King, Gordon, Fraser, Below, McCarley, Trombly, Disnard, Blaisdell, Fernald, Squires, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.**

**The following Senators voted No: Johnson, Roberge, Francoeur, Krueger, Brown.**

**Yeas: 19 - Nays: 5**

**Adopted.**

**Ordered to third reading.**

**SB 212-FN**, requiring the insurance department to develop a plan to address the needs of persons with chronic illnesses and disabilities. Finance Committee. Vote 7-0. Ought to Pass, Senator Hollingworth for the committee.

**SENATOR HOLLINGWORTH:** This bill was referred to Finance by the Insurance Committee. The Insurance Department assumed the cost of developing of a comprehensive state plan would require the assistance of a consultant with specific expertise in the area. The department es-

timated that the cost of that consultant service would be \$150,000. This cost would be offset by the increased industry assessment. The Finance Committee recommends ought to pass.

**Adopted.**

**Ordered to third reading.**

**Recess.**

**Out of Recess.**

**SCR 2**, urging the President and Congress to strengthen the finances of Social Security. Insurance Committee. Vote 5-1-1. Ought to pass with amendment, Senator J. King for the committee.

**1999-1199s**

**05/09**

### **Amendment to SCR 2**

Amend the resolution by replacing all after the resolving clause with the following:

That the President of the United States and Congress preserve and perpetuate Social Security for future generations of Americans without raising the normal retirement age or reducing other guaranteed benefits; and

That copies of this resolution, signed by the president of the senate and the speaker of the house, be forwarded by the senate clerk to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the New Hampshire congressional delegation.

**SENATOR J. KING:** This resolution sends a message to the President and congress that New Hampshire citizens have a strong invested interest in the health of the Social Security Plan. Working people have been paying into the system for most of their lives. This system can only work for all Americans if those who safeguard our money do so wisely and with future generations in mind. We are concerned that guaranteed benefits not be reduced, that normal retirement age remain unchanged. Please support this resolution to remind those at the national level that this is the money for the people who are working hard and contributing. Thank you.

### **SUBSTITUTE MOTION**

**Senator Wheeler moved to substitute rerefer for ought to pass with amendment.**

**Adopted.**

**SCR 2 is rereferred to the Insurance Committee.**

**SB 95**, relative to uninsured motor vehicle coverage. Insurance Committee. Vote 7-0. Inexpedient to Legislate, Senator Fraser for the committee.

**SENATOR FRASER:** Senate Bill 95 would have allowed car insurance buyers to use their uninsured motorist vehicle coverage to make up the difference between damages from an accident and the amount of liability coverage held by the at-fault driver. In other words, say my car gets hit and I am not at fault. The damage to the car and to me comes to \$50,000, but the person who hit me is only insured for \$25,000. Under 95, I could use my own uninsured policy up to the limit to make up the difference. The committee agreed with the sponsor that "under-insur-



ance" is a problem, but the committee was unanimous and didn't believe that this was the solution. The committee was unanimous in reporting this bill out as inexpedient to legislate.

**Committee report of inexpedient to legislate is adopted.**

**SB 96**, relative to pre-approval of payment of medical services by workers' compensation insurers. Insurance Committee. Vote 7-0. Rereferred to Committee, Senator Fraser for the committee.

**SENATOR FRASER:** Madame President, the Insurance Committee voted to rerefer SB 96 which would have allowed an injured worker to request prior approval of payment for medical service under workers' compensation. The committee felt that we should take time to find, first of all if there is a significant problem and secondly, to get more input both from the insurance industry and the insurance regulators on both sides of this issue. Just to explain a little bit, Madame President, as we all know, workers' compensation can be a litigious issue. It is not user friendly. What may happen, and the reason why the committee determined to rerefer the bill, was the fact that if the Department of Labor should determine prior approval of medical incurred expenses and then subsequently found out that this was not a compensable injury, it could create more problems than it could solve. The committee was unanimous in agreeing that there is a problem and that what SB 96 would have done would not have solved it. We recommend that the bill be rereferred to committee.

**Adopted.**

**SB 96 is rereferred to the Insurance Committee.**

**SB 147**, relative to self-referrals for chiropractic care under managed care organizations. Insurance Committee. Vote 4-3. Ought to pass with amendment, Senator Wheeler for the committee.

**1999-1196s**

**01/09**

**Amendment to SB 147**

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Chiropractic Care. Amend RSA 415 by inserting after section 18-h the following new section:

415:18-i Comparable Fees Required. Every insurer regulated under this chapter that covers care by doctors of chiropractic shall provide benefit payments at least equal to and consistent with the benefit payments to other health care providers. No insurer regulated under this chapter shall restrict the use of diagnostic code or current procedural terminology (CPT) codes for any provider group if those procedures are allowed for in the group's scope of practice and are deemed medically or chiropractically necessary.

2 New Sections; Chiropractic Care. Amend RSA 420-A by inserting after section 17-b the following new sections:

420-A:17-c Self-referrals for Chiropractic Care. A health service corporation under this chapter offering chiropractic benefits shall provide benefits to a subscriber who utilizes services of a chiropractic provider, only by a licensed chiropractor (doctor of chiropractic) by self-referral under the following conditions:

1. A subscriber may utilize the services of a doctor of chiropractic within the subscriber's health plan without discrimination relative to scope of practice, access, and fees.

II. The health service corporation shall fully disclose to the subscriber in clear and understandable language the exact terms and conditions of each option that the subscriber has purchased along with the co-payments or other cost-sharing features of each option. The commissioner of insurance shall adopt rules, under RSA 541-A, within 120 days, regarding presentation of these terms and conditions to facilitate the comparison by the subscriber of the terms and conditions of each option.

III. Within 10 working days of the first visit or consultation the doctor of chiropractic shall send to the health service corporation, or its designee, the chiropractic case findings. This shall be sufficient documentation for the initial 12 visits or the first 4 weeks of care, whichever comes first.

IV. If the chiropractic provider recommends care beyond 12 visits or 4 weeks, the participating doctor of chiropractic shall send to the health service corporation, or its designee, documentation containing information on the subscriber's progress and necessity of care as well as a care plan for extended chiropractic care up to 6 additional weeks or a maximum of 12 additional visits, whichever occurs first. This is recommended to provide the patient with 24 visits or 10 weeks of care without pre-certification or pre-approval and to provide the health service corporation or its designee with a more detailed record of the patient's chiropractic care status. If the doctor of chiropractic fails to provide the required documentation, the health service corporation or its subscriber shall not be liable to the chiropractic provider for any unpaid fees.

V. After a maximum of 24 visits, a subscriber who is continuing chiropractic care shall receive prior authorization, if required, from the health service corporation or its designee for the purpose of continued care by a provider of the same or similar specialty. Without the approval of the health service corporation, or its designee, and the establishment of chiropractic necessity of care, the subscriber shall not receive benefits for more than 24 visits for the same condition to a participating doctor of chiropractic in a 12-month period.

VI. The capitation rates shall not be less than the sum equivalent of the prevailing fees relative to the designated number of visits.

VII. The patient shall retain the right to choose chiropractic care on an elective, self-pay, fee-for-service basis.

420-A:17-d Comparable Fees Required. Every health service corporation regulated under this chapter that covers care by doctors of chiropractic shall provide benefit payments at least equal to and consistent with the benefit payments to other health care providers. No health service corporation regulated under this chapter shall restrict the use of diagnostic code or current procedural terminology (CPT) codes for any provider group if those procedures are allowed for in the group's scope of practice and are deemed medically or chiropractically necessary.

3 New Sections; Chiropractic Care. Amend RSA 420-B by inserting after section 26 the following new sections:

420-B:27 Self-referrals for Chiropractic Care. A health maintenance organization under this chapter offering chiropractic benefits shall provide benefits to an enrollee who utilizes services of a chiropractic provider, only by a licensed chiropractor (doctor of chiropractic) by self-referral under the following conditions:

I. An enrollee may utilize the services of a doctor of chiropractic within the enrollee's health maintenance organization without discrimination relative to scope of practice, access, and fees.

II. The health maintenance organization shall fully disclose to the enrollee in clear and understandable language the exact terms and con-

ditions of each option that the enrollee has purchased along with the co-payments or other cost-sharing features of each option. The commissioner shall adopt rules, under RSA 541-A, within 120 days, regarding presentation of these terms and conditions to facilitate the comparison by the enrollee of the terms and conditions of each option.

III. Within 10 working days of the first visit or consultation the doctor of chiropractic shall send to the health maintenance organization, or its designee, the chiropractic case findings. This shall be sufficient documentation for the initial 12 visits or the first 4 weeks of care, whichever comes first.

IV. If the chiropractic provider recommends care beyond 12 visits or 4 weeks, the participating doctor of chiropractic shall send to the health maintenance organization, or its designee, documentation containing information on the enrollee's progress and necessity of care as well as a care plan for extended chiropractic care up to 6 additional weeks or a maximum of 12 additional visits, whichever occurs first. This is recommended to provide the patient with 24 visits or 10 weeks of care without pre-certification or pre-approval and to provide the health maintenance organization or its designees with a more detailed record of the patient's chiropractic care status. If the doctor of chiropractic fails to provide the required documentation, the health maintenance organization or its enrollee shall not be liable to the chiropractic provider for any unpaid fees.

V. After a maximum of 24 visits, an enrollee who is continuing chiropractic care shall receive prior authorization, if required, from the health maintenance organization or its designee for the purpose of continued care by a provider of the same or similar specialty. Without the approval of the health maintenance organization, or its designee, and the establishment of chiropractic necessity of care, the enrollee shall not receive benefits for more than 24 visits for the same condition to a participating doctor of chiropractic in a 12-month period.

VI. The capitation rates shall not be less than the sum equivalent of the prevailing fees relative to the designated number of visits.

VII. The patient shall retain the right to choose chiropractic care on an elective, self-pay, fee-for-service basis.

420-B:28 Comparable Fees Required. Every health maintenance organization, indemnity provider, or third party payor regulated under this chapter that covers care by doctors of chiropractic shall provide benefit payments at least equal to and consistent with the benefit payments to other health care providers. No health maintenance organization regulated under this chapter shall restrict the use of diagnostic code or current procedural terminology (CPT) codes for any provider group if those procedures are allowed for in the group's scope of practice and are deemed medically or chiropractically necessary.

4 Effective Date. This act shall take effect 60 days after its passage.

SENATOR WHEELER: Senate Bill 147 is not a new mandate requiring chiropractic care. It just says that if your policy covers chiropractic services that you need to be able to access to them. Increasingly in New Hampshire, health care consumers are being denied covered access to chiropractic care because the primary care physician will not refer to a doctor of chiropractic. The amendment on page eight provides for a three-tiered approach to access. A patient may have direct access to the chiropractor for the first 12 visits without approval by the PCP, but the doctor of chiropractor (DC) must notify the plan that the patient is under their care. This requirement will help facilitate utiliza-



tion review. After the first 12 visits, if continued care is needed, the DC must issue a report to the plan and allow for the PCP participation in the care. Specifically at this level of care, the chiropractor will be required to send the plan and/or the PCP a report on the patient's care and document the necessity of care for up to a maximum of an additional 12 visits. If care is needed after a maximum of 24 visits, the first two-tiers, pre-approval will be required through traditional utilization review, but using a provider of the same or similar specialty. Other important provisions in this bill include 1) that there must be equal compensation for a given service, regardless of what kind of provider performs the service. For example, if a chiropractor and a medical doctor give an x-ray, they should receive the same reimbursement if it is the same kind of x-ray. 2) If a provider is licensed to bill from a given CPT code for coverage service then the provider cannot be restricted from billing according to the CPT code. You should be able to bill for what you are licensed to provide. It is a little confusing for me about these codes, but sometimes they are asked to bill for something that they didn't do, and I don't think that is right. If you are licensed to provide something then you should bill for what you provided. If you have exhausted your chiropractic benefits, you should be able to keep going to your chiropractor and pay out-of-pocket. Believe it or not, there are some HMO's that deny you access to your chiropractor even if you are paying out-of-pocket. In conclusion, this does not create a zone around chiropractic, it eliminates managed care, but establishes a process so that you can get what you paid for. This bill is not asking for more, it is asking for fair. I want to point out that people really aren't getting access to the chiropractors now. My own experience, when I didn't know what was wrong with my arm...I went to my doctor...I am not in an HMO, so it wasn't a question of who was going to pay, but it never occurred to him to suggest that I go to a chiropractor. I had an X-ray and we made sure that there was nothing that he could see in an X-ray that was causing the pain, and then basically, I said well I guess the pain is tolerable and he gave up. It took me, accidentally, to find out that a chiropractor would help it. So I went to a chiropractor and paid out-of-pocket and did a series of visits. It is not acute care, you can't just go once and get cured, that is why we have these series of visits. They don't cost very much, but you need to have more than one. Then a few years later, I forgot that my doctor was not necessarily ever going to think about chiropractors. I was having very serious pain in my back and I didn't know what was wrong. I went and to the doctor and his answer was to give me a prescription for Robaxin. Well, it is a pretty intense drug and it made me feel odd and I didn't like taking it. So odder than I normally am. So I finally came to and got off of the drug and cleared my head sufficiently and went to my chiropractor and realized that was the kind of care that I needed. So, we all know that the largest cost drivers in managed care today are drugs and the over utilization of high tech medicine. Senate Bill 147 is cost effective because it empowers consumers to choose a drug free treatment, and because it enhances the utilization review for this non invasive care. More than 200 supporters attended the hearing in Representatives Hall. I can assure you that your constituents want this legislation. You have probably received enough phone calls to know that too. I urge your support for SB 147.

SENATOR BROWN: Senator Wheeler, I have to ask you this question. You made the statement that the insurance company can prevent you

from going to a chiropractor. How do they stop you as a private citizen, from going to a chiropractor and paying for it out of your own pocket? How do they do that?

SENATOR WHEELER: I understood this yesterday. The chiropractor can't get reimbursed if he is a member of the plan and you are on that plan. So I don't think legally, if he is a member of that plan, that he can't accept money from you. He would have to do it for nothing.

SENATOR BROWN: Thank you.

SENATOR FERNALD: Senator Wheeler, am I correct that it is not that the HMO can prevent you from going to the chiropractor, it is that the HMO can prevent the chiropractor from accepting fees for service if they're part of the plan and the patient...

SENATOR WHEELER: Thank you, Senator Fernald, you explained it much better than I did. Thank you very much.

SENATOR SQUIRES: I rise to offer another point of view here. I, too have received a number of calls. I have spent a considerable amount of time last night talking to one of my constituents who is a chiropractor. This issue, it would seem, to be a common habit in health care. This bill arose from one event which was the NH Chiropractic Association had a dispute with one carrier, primarily. The relationship broke down partly due to access and partly over money because the chiropractors felt that they were not getting paid enough. Out of that bill, out of that situation comes this proposed statute change. There is no question that the door through which patients must pass to receive chiropractic services is narrow for some and full of impediments. But what this bill does is to remove this door. It puts indemnity insurance smack in the middle of managed care. Now the second thing that I want to talk to you about is that in some of the plans the chiropractors come under the heading of complimentary medicine. There are lots of terms here, alternative medicine and so forth, but complimentary medicine is in the rider policies for some of these plans. Here is what is included in complimentary medicine: We have acupuncture, anthropophosphic services, about which I know nothing, chiropractic services, homeopathy services and naturopathy services. So what you are asking the legislature to do is to take one of those entities and create this special category through which there is no utilization review for 24 visits. The first 12 visits there is no review at all. Then the second 12 visits all that is required is that the provider say that they need another 12. So the plan is on the hook here for 24 visits. So what about these other services? They are offered too. What about physical therapy? Why not have the same arrangements for physical therapy, for speech therapy and so forth? My third point is that this bill, and you will find it on page nine. It is also on page eight, puts the full force of the legislature straight into the contracting ability of an HMO. It says that - if you look on page nine. "The capitation rates shall not be less than the sum equivalent of the prevailing fees relative to the designated number of visits." What that means is that a plan cannot captivate a chiropractor, let us say for \$500. It cannot limit the amount. It says that if the average charge is \$75 a visit and you go to 20 visits, the plan is going to pay \$1500. It cannot negotiate a contract except for some of the fees. No one does that. Medicare does not do that. Medicaid does not do that. No plan does that. That is not anything but straight indemnity and capitation contracts are implicit and inherent in managed care. My fourth point is the scope of services. I got this book and some

of you did to. It was sent to others and me on the committee. It is a compendium of statements by patients fundamentally, as to what they have perceived to be the benefit of chiropractic. Some of them frankly, were just questionnaires. Some of them were letters and some of them were real. I read them all. Then I looked at this to see what it is that people are going to chiropractors for. There are 148 in here if you want the number. I identified 45 as talking about back pain. There were 81 that I couldn't figure it out. Then we have some interesting ones. We have a patient who is sure that chiropractic helped him with irritable bowel syndrome. Now there are connections through the spinal cord through intestinal tracts, but I know of no study, which says that the manipulation of the spine is going to help irritable bowel syndrome. We have temporomandibular joint disease (TMJ) treated for that. We have urinary incontinence, scoliosis, sinusitis, anxiety, bronchitis, and infertility. This woman had been infertile for ten years and went to the chiropractor and got pregnant. That is what it said. We should not in statute compel an insurance carrier to pay, let us say, for a chiropractor to treat sinusitis. That just isn't right. There somewhere has to be an attempt to look at this to have it under the general umbrella of managed care. My suggestion is and I wish that somebody would, I told the gentlemen last night, I wish that they would come and talk to me before this bill comes in the present form, because there is a problem, but what we ought to do, it seems to me, is direct our attention to the Insurance Department. The Insurance Department is the regulator of the managed care organizations. If this problem exists, and I believe that it does, the Insurance Department should get the managed care organizations in there and say look it, there is a consumer's issue here and fix it. I think, as you all know, if we could just get people, the right people in the right room, at the right time, we can solve a lot of problems without resorting to statutory change. So I can't support this bill for the reasons that I gave you. It is too broad, it does create a special category devoid of utilization review, and it directly puts statutes straight into the contracting ability between managed care organizations and their providers. Finally, it is forcing health insurers to pay for services that are being rendered that are just plain inappropriate. Thank you.

SENATOR WHEELER: Senator Squires, thank you for yielding. I think that you made your own case. At least you made my case that medical doctors don't have a great deal of appreciation for the services of chiropractors and why it is difficult to get services, but my questions are, I suppose that I had better put it in a would you believe phrase. The capitation rate question that you raised, the capitation rate shall not be less than the sum equivalent to the prevailing fees relative to the designated number of visits. It is my understanding that that is not doing what you said, but would you believe that I think that it says that this section of the bill requires that for those insurers who provide chiropractic services through a capitation rate system, similar direct access, and fee systems, be established as is required in the subparagraphs three and four. So would you believe that I believe that it is not saying that you are going to have to pay more, it is saying that you can't do less?

SENATOR SQUIRES: Would you believe, Senator Wheeler, that in the testimony...in a hearing, we heard an individual get up and say with considerable pride, I thought, that they had done 350,000 procedures, manipulations or whatever, and he was looking forward to doing another 350,000. Now at any kind of rate, at any kind of payment for that volume, I didn't do 350,000 in 25 years. There is here, and we should be



perfectly straightforward about it, there is the patient's interest, but don't make any mistake that this is heavily in the interest of the providers. You can't take out one section of the provider community that does have a legitimate complaint, but abolish it to this extent.

SENATOR WHEELER: Would you believe that I still think that you are proving your point that the medical community doesn't have enough understanding of what the chiropractic community can do for patients?

SENATOR WHEELER: I wait to study the chiropractor irritable bowel syndrome. It doesn't exist.

SENATOR FERNALD: Senator Squires, I see that this was a close vote in the committee and I suspect that there is a lot of opinion in this room and I am trying to understand the issue. Do you think that chiropractors have something to offer to the population at large?

SENATOR SQUIRES: Yes, I do.

SENATOR FERNALD: Do you think that there is a problem in that the gatekeeper, HMO situation, where there are physicians who think that the chiropractors have nothing to offer and will not refer them?

SENATOR SQUIRES: Yes.

SENATOR FERNALD: If we don't allow direct refer, how do we fix this problem? You said that we should fix it some other way, but what other way is there?

SENATOR SQUIRES: I think that we should go to the Department of Insurance and say to them, you regulate the managed care industry and you have consumer evidence which says that the managed care industry is not making available to you, to the consumers, in some instances, a covered benefit. Now fix it. Listen, there are plenty of reasons to want a neurologist, no questions about it, but you don't want to go to a neurologist for every headache, that is not right. You need some sort of screening here to filter out the things that are clearly inappropriate. We heard testimony that said that they could treat a clubfoot. There is no chiropractor in the world that ought to be treating a clubfoot. Most surgeons wouldn't do that. You need a pediatric orthopedic surgeon. So there needs to be some screening and the Insurance Department, as the regulator, ought to make sure that happens. If it doesn't, then I suppose like all of these other intractable problems, we will have to resort to statutory change, but not today.

SENATOR WHEELER: Senator Squires, would you believe that I don't think that anyone in this room thinks that the chiropractors were performing surgery on a person with a clubfoot? That was correcting the maladjustment of the spine that occurred from walking incorrectly on a clubbed foot and would you also believe that I feel that you have misinterpreted this information?

SENATOR SQUIRES: I believe that you feel that way.

SENATOR RUSSMAN: Senator Squires, it sounds like what you are saying is that you think that the Insurance Department could come up with some kind of a rule or regulation through their rulemaking process that would require primary care physicians to seriously consider sending people to chiropractors rather than to not consider it at all or blowing them off or what have you. Is that what you are suggesting?

SENATOR SQUIRES: Yes. In this 148 patients here, we have 45 for back pain. Now it seems to me that you could design a series of rules. Say a

person with chronic back pain, not responding to customary treatment, goes to see the chiropractor. I don't have any difficulty with that. It is just the totality of it that bothers me.

### **SUBSTITUTE MOTION**

**Senator Gordon moved to substitute rereferred for ought to pass with amendment.**

SENATOR GORDON: I don't sit on the Insurance Committee so I haven't been part of the debate at this point in time, but I am not sure that I am going to be able to vote for the bill in its current form. I also recognize that there is a problem. I see any number of clients in my law firm who basically have problems that occurred through their employment and their workers' compensation clients or other clients that for one reason or another have received injuries. It is very, very common for those people to tell me that the only treatment that they have received that has done any good for them is in fact their chiropractor. I hear that all of the time. But I also hear, and I am very well aware of the fact that there seems to be a predisposition among some physicians that chiropractic is equivalent to quackery. In fact, they just don't refer patients to chiropractors. I am not sure that I am prepared to totally undo the scheme of managed care that we have to simply make chiropractors available to the public any time that they want them. I think that we should do that in an organized type manner. Recognizing that there is a problem and that problem ought to be addressed, whether it is through the Insurance Commission or some type of avenue of appeal for patients who feel that they should be given chiropractic services and have been denied by virtue of the fact that the gatekeeper physician has acted unreasonably. There ought to be some avenue of appeal one way or the other. I don't think this bill is the way to do it. What I would like to do is to keep the bill alive, and see if in fact, there are other avenues that could be explored, but basically rerefer the bill for now and continue to explore alternatives, but I just can't vote for the bill the way that it is currently structured and that is that people can just go whenever they want to and undo the managed care system, which as many problems as it may have, basically it has helped keep health care costs low and I do in fact appreciate that. Thank you.

SENATOR DISNARD: Senator Gordon, when you use the word "rereferred" are you saying a study so that no decision would be made this year?

SENATOR GORDON: No, that is not my intention at all. The fact is that I would like to keep the issue alive so that it could be explored.

SENATOR DISNARD: Under the new Senate Rules, all Senate Bills must be crossed over by the 20<sup>th</sup>?

SENATOR GORDON: Well my understanding of what a rereferred bill is, is a rereferred bill stays alive during the course of the summer and is obligated to be brought back in the next year.

SENATOR DISNARD: Then you are answering my question. My question is would you believe that I think what you're doing is stalling this until another year?

SENATOR GORDON: Senator Disnard, I am not going to take offense of that, but I am going to tell you that that certainly is not my intention. The fact is that there is a bill here in its current form that I can't vote for, but I think that it represents a legitimate issue. I think that issue should be kept alive and that is why I am recommending that it should be rereferred, Senator.

SENATOR WHEELER: I just want to clarify a few things that have been said. The bill that is before you does not give unlimited access to chiropractors. The proposals that have been made, the suggestions that have been made would still have those barriers in the way of being able to go. If it was on an appeal process, you would still have to go to your doctor and have been denied appropriate care for some time, and if it is only for chronic back pain, it is eliminating a lot of things that chiropractors can do. I just want to be on the record as saying that I think that there are a lot of good feeling and good spirit in the room about what chiropractors can do, but I also think that there are some misunderstandings that need to be addressed also. Thank you.

Senator Trombly moved to have **SB 147**, relative to self-referrals for chiropractic care under managed care organizations, laid on the table.

**Question is on the motion to have SB 147 laid on the table.**

**A roll call was requested by Senator Gordon.**

**Seconded by Senator Blaisdell.**

**The following Senators voted Yes: F. King, McCarley, Trombly, Blaisdell, Fernald, Pignatelli, Francoeur, Larsen, Brown, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.**

**The following Senators voted No: Gordon, Johnson, Fraser, Below, Disnard, Roberge, Squires, Krueger.**

**Yeas: 16 - Nays: 8**

**Adopted.**

### **LAID ON THE TABLE**

**SB 147**, relative to self-referrals for chiropractic care under managed care organizations.

**SB 162**, establishing the voluntary small employer health insurance purchasing alliance. Insurance Committee. Vote 6-1. Ought to pass with amendment, Senator Fraser for the committee.

**1999-1194s**

**01/09**

### **Amendment to SB 162**

Amend the title of the bill by replacing it with the following:

**AN ACT** providing for the licensure and regulatory oversight of voluntary small employer health insurance purchasing alliances.

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; The Voluntary Small Employer Health Insurance Purchasing Alliance Act. Amend RSA by inserting after chapter 420-J the following new chapter:

### **CHAPTER 420-K**

#### **THE VOLUNTARY SMALL EMPLOYER HEALTH INSURANCE PURCHASING ALLIANCE ACT**

**420-K:1 Purpose.** The purpose and intent of this chapter is to:

I. Increase the affordability, efficiency, and fairness of health insurance coverage for small employers by providing for the licensure and oversight of voluntary purchasing alliances through which small employers and their employees may purchase health coverage in the manner of large employer groups.



II. Allow small employers and their employees to obtain better value in purchasing health insurance by consolidating purchasing responsibilities and resources, thereby increasing bargaining power and purchasing expertise and reducing the administrative cost of health plan contracting, enrollment, premium collection and payment for multiple employers.

III. Provide small employers and their employees a meaningful choice of health carriers and health benefit plans through an open and fair process in which qualified carriers compete to provide health coverage to alliance members.

IV. Foster competition based on value by:

(a) Providing consumers with clear information about health carriers and coverages, including performance measurement and consumer satisfaction data;

(b) Requiring carriers to offer standardized coverages for meaningful comparison; and

(c) Reducing the incentive and opportunity for health carriers to engage in risk selection and cost-shifting from other purchasers.

V. Avoid jurisdictional confusion and unnecessary and expensive bureaucracy within a purchasing alliance and state government by clarifying the respective roles and jurisdiction of existing regulatory agencies and a purchasing alliance and in this manner to avoid creating an undue burden on small employers seeking to purchase health care coverage through a purchasing alliance.

420-K:2 Definitions. In this chapter:

I. "Commissioner" means the insurance commissioner.

II. "Eligible dependent" means "eligible dependents" as defined in RSA 420-G:2, V.

III. "Eligible employee" means "eligible employees" as defined in RSA 420-G:2, VI.

IV. "Employee enrollee" means an eligible employee, self-employed individual or an eligible dependent of an eligible employee who is enrolled in a health benefit plan offered through an alliance by a participating carrier.

V. "Health benefit plan" means "health coverage" as defined in RSA 420-G:2, IX.

VI. "Health carrier" means "health carrier" as defined in RSA 420-G:2, VIII.

VII. "Member small employer" means a small employer who enrolls in an alliance.

VIII. "Participating carrier" means a carrier deemed by an alliance as meeting the requirements of RSA 420-K:6 and in contract with the alliance.

IX. "Purchasing alliance" or "alliance" means a non-risk bearing, non-profit corporation licensed pursuant to this chapter that provides, on a voluntary basis, health insurance coverage through multiple unaffiliated participating carriers to member small employers and their employees within a defined service area authorized by the commissioner.

X. "Small employer" means "small employer" as defined in RSA 420-G:2, XVI.

420-K:3 Jurisdiction of the Commissioner; Penalties.

I. The commissioner shall have the authority to regulate the establishment and conduct of purchasing alliances authorized under this chapter.

II. No person or entity may market, sell, offer, or arrange for a package of one or more health benefit plans underwritten by two or more carriers to two or more small employers or their eligible employees without first being licensed by the commissioner pursuant to this chapter.

III. A person or entity not licensed by the commissioner as a purchasing alliance and engaged in the purchase, sale, marketing or distribution of health insurance or health care benefit plans shall not hold itself out as an alliance, health insurance purchasing alliance, purchasing alliance, health insurance purchasing cooperative or purchasing cooperative or otherwise use a confusingly similar name.

IV. Nothing in this chapter shall be deemed to be in conflict with or limit the powers granted to the commissioner under the laws of this state.

V. Purchasing alliances shall report to the commissioner any suspected or alleged law violations.

VI. Violations of any of the provisions of this chapter shall be subject to an administrative fine not to exceed \$2,500 per violation. The commissioner may also deny, nonrenew, suspend or revoke the license or certificate of authority of an alliance for any violation of this chapter or the failure to comply with an order of the commissioner issued under this chapter.

#### 420-K:4 Purchasing Alliance Application, Licensing and Continuing Review Process.

I. An application, in a form designed by the commissioner, shall be completed and filed with the commissioner by an authorized representative of the board of the nonprofit corporation established as a precursor to being granted a purchasing alliance license. An application shall not be deemed filed until all information necessary to properly process the application has been received by the commissioner. Upon filing, the commissioner shall make a determination concerning the application and shall provide notice of the determination to the applicant. If approved, a copy of a license, in a form designed by the commissioner, shall be provided to the purchasing alliance. The license shall serve as authorization to operate pursuant to this chapter.

II. Each applicant shall file with the commissioner the following information or documents:

(a) A business plan for approval by the commissioner. The business plan shall consist of a detailed, written plan of operations explaining how the applicant intends to fulfill the purposes and requirements of this chapter. The business plan shall be a written commitment by the alliance. Material changes in policy or operations of the business plan are subject to the prior approval of the commissioner on the same basis as the original business plan. The business plan shall include, but not be limited to, the following information:

(1) The specific steps planned to increase affordability, efficiency and fairness of health insurance coverage, allow small employers and their employees to obtain better value in purchasing health insurance, provide small employers and their employees meaningful choice of health carriers and health benefit plans, and foster competition based on value.

(2) The scope of services to be offered in the proposed service area and the resources and expertise to be used to implement and administer those services. The business plan shall affirmatively demonstrate that the alliance will have the technical expertise and physical capacity to serve a significant group of small employers and their eligible employees over a wide territory. An alliance shall demonstrate the technical and physical capacity to provide service quality throughout the entire service area.

(b) The applicant's nonprofit articles of incorporation, bylaws and other formation and business operation documents. An applicant shall

demonstrate to the satisfaction of the commissioner that its corporate governance makes it an appropriate and effective representative of small employers and their eligible employees' interests within the proposed service area. An applicant shall demonstrate that it is not merely a marketing or distribution channel for a single product or the products of a single carrier and that it will organize and facilitate meaningful competition between multiple unaffiliated carriers.

(c) A list of officers and directors of the applicant and the contract administrator, if one is employed, and personal biographical information or firm descriptions for each. The personal biographical information and firm descriptions shall demonstrate that those involved in the operation of the alliance have the expertise, experience, and character to effectively and professionally represent small employers and their eligible employees in a fiduciary capacity.

(d) Evidence of adequate security and prudence in the accounting, deposit, collection, handling, and transfer of moneys. An applicant shall affirmatively demonstrate adequate financial controls to the satisfaction of the commissioner as a condition of licensure.

(e) A description of the proposed service area.

(f) Disclosure of any preexisting oral or written agreements.

(g) Any other information required by the commissioner and deemed pertinent to the policies and operation of the alliance.

III. Each duly licensed purchasing alliance shall file with the commissioner the following information or documents on a periodic basis to enable the commissioner to perform his or her oversight function:

(a) Quarterly financial statements and annual reports showing that the alliance is fulfilling the purposes and requirements of this chapter, is adequately representing the interests of small employers and their eligible employees, is operating in a sound financial fashion, is not a risk-bearing entity, is utilizing sound financial controls and money management, and is not mismanaging or misappropriating funds either through neglect or malfeasance.

(b) Proposed material changes in the policy or operations of the business plan. Such proposed changes are subject to approval by the commissioner prior to implementation by the alliance.

(c) Any other information required by the commissioner and deemed pertinent to the policies and operation of the alliance.

IV. The commissioner may conduct financial and performance audits or examinations of an alliance on a regular basis. The commissioner may require audited financial statements from an alliance. Reasonable costs of examinations or audits are to be paid by the alliance.

V. The commissioner may approve all assessments made upon member small employers by the alliance for costs incurred or anticipated in connection with the operation of the alliance.

VI. The following constitute grounds for denial, nonrenewal, suspension or revocation of an application or existing license, following notice and an opportunity for hearing:

(a) Failure to comply with any of the provisions of this chapter.

(b) Failure to disclose a preexisting oral or written agreement during the alliance application process.

(c) Failure to comply with and carry out the purchasing alliance business plan filed with the commissioner.

(d) Failure to have adequate controls or failure to follow approved procedures.

(e) Failure to meet minimum standards in a financial or performance audit or examination.



(f) Failure to extend alliance health benefit plan coverage to a significant group of small employers and their eligible employees.

(g) Failure to comply with a lawful order of the commissioner.

(h) Engaging in an unfair or deceptive act or practice.

(i) Filing any necessary form with the commissioner that contains fraudulent information or omissions.

(j) Misappropriation, conversion, illegal withholding, or refusal to pay over upon proper demand any moneys that belong to a person or participating carrier and that have been entrusted to the alliance in its fiduciary capacity.

VII. As an alternative to the denial, nonrenewal, suspension or revocation of an application or existing license, the commissioner may impose conditions on licensure, or continued licensure. For example, the commissioner may require the removal and replacement of managerial or marketing staff or third party contractors to remedy compliance or performance problems.

VIII. In the event the alliance becomes insolvent, the commissioner may place the alliance in receivership for the purpose of protecting the interests of alliance enrollees.

420-K:5 Powers and Duties of and Restrictions on Purchasing Alliances.

I. A purchasing alliance shall:

(a) Offer health benefit plans that are available to all small employers in the alliance's service area.

(b) Establish administrative and accounting procedures for operating the alliance, for providing services to member small employers and enrollees and for preparing an annual budget.

(c) Develop standard enrollment procedures for enrolling small employers and their eligible employees and dependents.

(d) Establish procedures for annual or rolling open enrollment periods.

(e) Establish procedures and mechanisms for billing and collection of premiums from member small employers, including any share of the premium paid by employee enrollees.

(f) Establish conditions of participation for small employers that conform to the requirements of this chapter and RSA 420-G and include, but are not limited to, the following:

(1) Assurances that the member small employer is a valid small employer group and is not formed for the purpose of securing health benefits coverage.

(2) Prepayment of premiums or other mechanisms to assure that payment will be made for coverage.

(g) Provide that each eligible employee is permitted to enroll in any health benefit plan offered by any participating carrier so long as the health benefit plan provides coverage where he or she works or lives.

(h) Establish conditions of participation for participating carriers.

(i) Develop model contracts which detail for potential contractors the requirements of the alliance and provide a copy of the contract to interested carriers.

(j) Develop and make available a list of objective criteria that shall be met by participating carriers in order to be eligible to participate in the alliance.

(k) Establish conditions of participation for agents or brokers.

(l) Define a set of standardized health benefit plans which the alliance will contract to purchase from participating carriers. A participating carrier contracting to provide one or more such benefit plans through the alliance shall be deemed to be in compliance with the guaranteed

issue and renewability requirements in RSA 420-G:6, III with respect to such benefit plan or plans so long as it actively markets, issues, and renews such plan or plans to all eligible employees of all member small employers of the alliance.

(m) Except as provided herein, contract, through an open and fair competitive process, with at least 3 unaffiliated participating carriers in each regional service area of the state to ensure that enrollees have a choice from among a reasonable number of differing types of competing carriers and health benefit plans. The alliance may contract with less than 3 participating carriers in a given service area if the commissioner determines that it is impracticable or otherwise inconsistent with the interests of enrollees to attempt to contract with 3 or more participating carriers.

(n) Place into its contracts between the alliance and member small employers the following:

(1) A provision stating that, for administrative purposes, the alliance shall be the policyholder or contract holder of the health benefit plan on behalf of member small employers, their eligible employees and eligible dependents; and

(2) A provision stating that the participating carrier shall issue a certificate of coverage, or equivalent document, specifying the essential features of the health benefit plan's coverage to each enrolled eligible employee.

(o) Provide to alliance members clear, standardized information on each participating carrier and the qualified health benefit plans offered by each participating carrier, including information on price, benefits, enrollee costs, quality, patient satisfaction, enrollment, grievance procedures and rights and responsibilities. Furthermore, the alliance shall provide qualified health benefit plan comparison sheets to participating members and their employees with information regarding coverage that may be obtained through the participating carriers.

(p) Transmit enrollment and eligibility information to participating carriers on a timely basis.

(q) Develop uniform standards for data to be provided by participating carriers. In formulating such standards, the alliance shall strive for consistency with health care data collection activities underway in New Hampshire and nationally.

(r) Specify in contracts with participating carriers how all premiums shall be transmitted and the frequency of that transmission, along with appropriate language for penalties and grace periods on late payments of premiums.

(s) Maintain a trust account or accounts for deposit of all moneys received and collected for the operation of the alliance. The alliance, its board members, employees and agents shall have a fiduciary duty with respect to all moneys received or owed to it to assure payments of its obligations and a full accounting to its members and the commissioner.

(t) Assure the offering of the same premiums and prices on negotiated health care coverage to all member classes equally, and treat all members within a class equally with regard to membership and administrative fees and benefits of membership.

(u) Review information and recommendations from consumers, employers, participating carriers or health care providers and other sources and, as appropriate, issue periodic reports or recommendations to the commissioner to improve the delivery of health services and the purchasing of health coverage.

(v) Submit to the commissioner, on a periodic basis as determined by the commissioner, quarterly financial statements, annual reports, proposed material changes in the policy or operations of the business plan, and any other information required by the commissioner regarding the policies and operation of the alliance.

II. A purchasing alliance may:

(a) Receive, review, and act, as appropriate, on grievances against participating carriers by member small employers or enrollees.

(b) Undertake any activity necessary to administer the alliance, including marketing and publicizing the alliance, and assuring that participating carriers, contractors, participating small employers, and enrollees are in compliance with alliance requirements.

(c) Establish contracts with participating carriers to provide health coverage to alliance members. The alliance shall not be required to specify the amounts encumbered for each contract, but may allocate funds to each contract based on projected and actual subscriber enrollments. The alliance may establish performance standards for specific contractual elements and penalties for failure to fulfill contractual obligations.

(d) Establish contracts with small employer members.

(e) Contract with qualified, independent third parties for services necessary to carry out the powers and duties of the alliance.

(f) Enter into all other contracts as are necessary to carry out the powers and duties of the alliance.

(g) Appoint a beneficiary advisory council to evaluate alliance functions and the performance of participating carriers in order to assess the efficacy of the operations for member small employers and enrollees.

(h) Appoint advisory committees, as necessary, to provide technical assistance in the operation of the program and in carrying out the purposes of this chapter.

(i) Assess member small employers a reasonable fee for costs incurred or anticipated in connection with the operation of the alliance.

(j) Require as a condition of membership that all employers include all their eligible employees or a minimum percentage of employees in coverage purchased through the alliance. The alliance may require an employer making membership application to the purchasing alliance that would entail entering fewer than 100 percent of the employer's eligible employees or dependents to demonstrate that the resultant membership will not result in an adverse selection group being brought into the alliance or that the action would otherwise function as a form of risk selection or risk avoidance.

(k) Reject or allow a carrier to reject an employer from membership or drop or allow a carrier to drop a member small employer if the member employer or any of its eligible employees fail to pay premiums or engage in fraud or material misrepresentation in connection with a health benefit plan purchased through the alliance. If a member small employer or enrollee is dropped from coverage, the enrollee shall be entitled to continuation and conversion coverage to the extent provided for under applicable state and federal continuation laws and the state conversion law.

(l) Contract with licensed insurance agents or brokers to market and service coverage made available through the alliance to its members. Compensation for agents and brokers may not vary based on the actual or expected health status or medical utilization of the group to which coverage is sold.



(m) Exclude a carrier or freeze enrollment in a carrier for failure to achieve established quality, access or information reporting standards of the alliance.

(n) Require that member employers and their eligible employees continue to pay administrative fees that are part of the contract with the alliance if a member employer or enrollee cancels prior to completion of a contract period.

(o) Negotiate with participating carriers the premium rates charged for coverage offered through the alliance consistent with RSA 420-K:6.

(p) Request such information from participating carriers as is necessary to carry out the powers and duties of this chapter.

(q) Sue or be sued, including taking action necessary for securing legal remedies on behalf of the alliance, member small employers, or enrollees.

(r) Apply for loans or loan guarantees from the New Hampshire business finance authority under RSA 162-A for the purpose of funding startup costs.

(s) Receive and accept loans, grants, funds, or anything of value from a public or private entity. This shall include:

- (1) Employer premiums;
- (2) Employer participation fees;
- (3) Employer late fees;
- (4) Employer reinstatement fees;
- (5) Agent and broker fees paid by the employer;
- (6) Interest earned on accounts;
- (7) Funds paid by the participating carriers for a pooled marketing effort;
- (8) Public sector and private sector grants, gifts, loans or donations; or

(9) Other lawful sources.

(t) The alliance may also receive and accept contributions from a legitimate source of property, labor, or any other thing of value.

(u) Expend funds to pay:

- (1) Participating carriers under their contracts.
- (2) Third parties for services provided under contract.
- (3) Employer billing adjustments.
- (4) Agent and broker fees.
- (5) The alliance's administrative expenses.
- (6) All other expenditures duly authorized by the board.

(v) Exercise all powers reasonably necessary to carry out the powers and duties granted or imposed under this chapter.

### III. A purchasing alliance shall not:

(a) Purchase health care services, assume risk for the cost or provision of health care services, or otherwise contract with health care providers for the provision of health care services to enrollees.

(b) Exclude from membership in the alliance a small employer, eligible employee or eligible dependent of an eligible employee who is in the service area of the alliance and who agrees to pay fees for membership and the premium for health coverage through the alliance and who abides by the bylaws and rules of the alliance.

(c) Prohibit the participation of small employers, or differentiate classes of membership, based on industry type, experience, gender, family status, education, health status, income, or other means in conflict with the rating methodology specified in RSA 420-G:4.

(d) Charge a fee not directly related to the operation of the alliance or for non-health coverage related activities.

(e) As a condition of membership, require a small employer, eligible employee, or eligible dependent to subscribe to limited health coverage or non-health coverage related products or services.

(f) Engage in any competitive act or practice that results in the selection of member small employers and enrollees based on industry type, experience, gender, family status, education, health status, income, small employer size, or other factors in conflict with the rating methodology specified in RSA 420-G:4.

(g) Require or take any action inconsistent or in conflict with state laws or regulations.

#### 420-K:6 Requirements for Participating Carriers.

I. In order to qualify as a participating carrier, a carrier must be able to satisfactorily demonstrate all the following operating characteristics to the alliance:

(a) The carrier is licensed and in good standing with the department of insurance.

(b) The ability to administer health coverage, to provide adequate service, and to comply with all contractual requirements of the alliance.

(c) The ability to provide enrollees with reasonable access to covered services.

(d) The ability to provide coverage for enrollees in any service area in which the carrier plans to participate through the alliance.

(e) The ability to arrange and pay for the appropriate quality, level, and type of health care services.

(f) The ability to provide standard data required by the alliance, in a manner prescribed by the alliance, including information on plan performance, enrollee satisfaction, provider payment and incentive structures, and such other standard surveys as may be prescribed by the alliance, and to meet reasonable satisfaction measures as may be established by the alliance.

(g) The ability to meet quality of care standards established by government and industry authorities.

(h) A strong financial condition.

(i) Adequate administrative management.

(j) A procedure to address enrollee grievances and appeals.

(k) The ability to achieve satisfactory enrollment levels within the service area in which the carrier is licensed.

(l) All other criteria established by the alliance.

II. In evaluating which carriers may participate in the alliance, the alliance shall consider, among other factors:

(a) Minimum geographic service area and participation requirements, maximum thresholds for premium rates, and standards for determining whether a carrier operates efficiently.

(b) The ability of a carrier to provide high quality services within a service area.

(c) Pricing and the competitiveness of each bid from a carrier.

(d) The effect of contracting with additional carriers on the administrative costs of the alliance and member small employers, the efficiency of the alliance, and the competitiveness of the premiums that will be paid to participating carriers.

III. Participating carriers that contract with or employ health care providers shall have mechanisms to accomplish all of the following, in a manner satisfactory to the alliance, in consultation with the carrier's licensing agency:

(a) Review the quality of care covered.

(b) Review the appropriateness of care covered.

(c) Provide accessible health care services.

IV. Every participating carrier shall:

(a) Meet the standards established by the alliance pursuant to this chapter.

(b) Provide data and information as required by the alliance.

(c) Comply with all laws and regulations regarding underwriting, rating, claims handling, sales, solicitation, licensing, fair marketing, unfair trade practices, the provisions of this chapter, and other applicable state statutes.

(d) Enroll and dis-enroll individuals in the manner specified by the alliance.

(e) Comply with other requirements established by the alliance pursuant to this chapter.

V. Nothing in this chapter shall prohibit participating carriers from contracting with particular health care providers or types, classes, or categories of health care providers, or setting reimbursement methodology.

VI. Notwithstanding anything to the contrary in RSA 420-G:6, in the event the participating carrier elects to terminate its contract with the alliance, the participating carrier shall:

(a) Provide advance notice of its decision to the alliance; and

(b) Provide notice of the decision at least 180 days prior to the nonrenewal of health coverage to the member small employers and employee enrollees. A participating carrier that elects not to renew a health benefit plan with the alliance shall be prohibited from writing new business through the alliance for a period of 3 years from the date of the notice to the alliance or until the alliance, with the concurrence of the commissioner invites the former participating carrier to renew participation, whichever is sooner.

420-K:7 Marketing Health Benefit Plans.

I. The alliance shall establish marketing standards for use by participating carriers.

II. Any marketing, advertisement, or educational material for health coverage sold through the alliance shall be approved by the alliance prior to its use. The alliance shall review all materials submitted to it and the materials shall be deemed approved if not disapproved within 30 days. The alliance may, through its contracts with participating carriers, deem certain classes of materials to be approved.

III. The alliance shall make approved marketing materials available to member small employers in an efficient and standardized manner. These materials shall include, but not be limited to, an accurate summary of benefit plans, rates, cost, and accreditation information relating to the offerings of the participating carrier.

IV. This section shall not be construed to prohibit or to compel the alliance or a participating carrier from using the services of an agent or broker.

V. A participating carrier, agent, broker, contractor, or producer of a participating carrier, or independent insurance agent, broker, contractor, or producer shall not engage, directly or indirectly, in an activity or marketing practice that would encourage member small employers or eligible employees to:

(a) Refrain from enrolling in a health benefit plan offered through the alliance because of their health status or claims experience;

(b) Seek coverage from other participating carriers because of their health status or claims experience; or



(c) Enroll or fail to enroll in the alliance because of their health status or claims experience.

VI. Alliance members shall be encouraged to notify the commissioner of marketing practices or materials that are contrary to the provisions of this section. The commissioner shall monitor compliance with this section and investigate possible violations of the provisions of this section or other related unfair trade practices.

420-K:8 Risk Adjustment Mechanism. In order to reduce the incentive for risk selection and to improve fairness and efficiency, and in the absence of a risk adjustment mechanism established by regulation or order for the entire small group market, an alliance may establish a payment mechanism to adjust payments to participating carriers prospectively or retrospectively based on the amount of risk covered by each participating carrier. To establish such a mechanism, the alliance may appoint an advisory committee composed of individuals that have risk adjustment and actuarial expertise to help establish the risk adjusters.

420-K:9 Conflict of Interest. No officer or board member or director or contract administrator of an alliance or members of their households may be employed by, be a consultant for, be a member of the board of directors of, or be affiliated with, an agent of, or otherwise be a representative of a carrier or other insurer or an agent or broker. This provision shall not preclude an officer or board member or director or contract administrator of an alliance from purchasing health coverage through the alliance.

420-K:10 Purchasing Alliance Distinguished From Multiple Employer Welfare Arrangement. Purchasing alliances shall not bear risk, and therefore, pursuant to RSA 415-E:2, II, shall not be subject to the requirements of RSA 415-E.

420-K:11 Minimum Participation Requirements. The provisions of RSA 420-G:9 permitting carriers to impose minimum participation requirements on small employer groups shall not be applicable to the alliance or to member small employers, and health carriers may not impose minimum participation requirements on an employer-by-employer basis as a condition of becoming a participating carrier.

420-K:12 Purchasing Alliance Evaluation. Purchasing alliances shall make an annual report to the commissioner which shall include at least the following:

I. The progress achieved in making affordable health care coverage available to employees of member small employers.

II. The progress achieved in assuring choice of health carriers and health care coverage to employees of member small employers.

III. The need, if any, for financial incentives or other mechanisms to increase participation in the alliance.

IV. Other changes in the law or procedure needed to accomplish the goals set out in RSA 420-K:1.

2 Effective Date. This act shall take effect 60 days after its passage.

1999-1194s

#### AMENDED ANALYSIS

This bill sets standards for the licensure and regulatory oversight of voluntary small employer purchasing alliances that will provide, on a voluntary basis, health insurance coverage through multiple unaffiliated participating carriers to member small employers and their employees in New Hampshire.

SENATOR FRASER: Madame President and members of the Senate. SB 162, establishing the voluntary small employer health insurance purchasing alliance. These alliances would provide health insurance coverage on a voluntary basis to members' small employers and their employees in New Hampshire. At the public hearing, this bill was supported by the Department of Insurance, Resources and Economic Development, Health and Human Services and by small business owners including the BIA. The way that it would work is simply that the Insurance Department would screen in licensed applicants to run purchasing alliances. The applicants could only be nonprofit entities who would assume administrative and fiscal responsibility for the alliance. The bill is important because it serves the needs of small businesses. Small businesses are a vital element in New Hampshire's economy. Ninety-eight percent of our New Hampshire businesses employ fewer than 100 people. A significant problem confronting small businesses in hiring and retaining qualified employees. Business owners took time to come to the hearing to say that the ability to offer benefits is a major factor in recruiting and keeping employees. The commissioner of DRED said that the availability of health insurance is an important factor for companies that are considering moving to the state. Today only 40 percent of the small employers in the state offer mental health insurance at all. Madame President, the committee was unanimous in reporting this bill as ought to pass.

**Amendment adopted.**

**Ordered to third reading.**

**SB 166**, requiring insurance coverage for certain physical, occupational, and speech therapies. Insurance Committee. Vote 7-0. Ought to pass with amendment, Senator Squires for the committee.

**1999-1198s**

**08/09**

### **Amendment to SB 166**

Amend the title of the bill by replacing it with the following:

**AN ACT** establishing a committee to study insurance coverage for certain physical, occupational, and speech therapies.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a committee to study insurance coverage for certain physical, occupational, and speech therapies.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study the value and viability of ensuring that those individuals with developmental and acquired disabilities are treated with parity in health care benefit coverage similar to pharmaceutical benefits available to individuals with chronic illnesses by requiring certain health care insurers to provide coverage for physical, occupational, and speech therapies.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 1999.

6 Effective Date. This act shall take effect 60 days after its passage.

**1999-1198s**

### AMENDED ANALYSIS

This bill establishes a committee to study the value and viability of requiring certain health care insurers to provide coverage for physical, occupational, and speech therapies.

SENATOR SQUIRES: This bill was well conceived as it was initially presented, but I couldn't develop the cost estimates. What we are talking about here is in essence, patients with disabilities, a chronic condition that in effect needs chronic treatment. Speech therapy, physical therapy or occupational therapy. The idea is that in that setting, the therapy is intended to maintain, but not necessarily improve. The trouble is that although I know roughly the number of patients involved, I could not find...in fact, there may not be available, an analysis of giving a population of patients with disability and brain injury and how many require physical therapy and at what volume, how many have speech difficulties and require speech therapy and so forth? Without that information, it is impossible to translate this bill as originally presented into cost. So what I would like to do is to study it and try to collect this information and get at least an estimate as to what the financial ramifications of a proposal like that would be. Therefore, I am asking you to support the idea of a study committee for that purpose. Thank you.

**Amendment adopted.**

**Ordered to third reading.**

**SB 167**, relative to off-label prescription drugs. Insurance Committee. Vote 7-0. Ought to pass with amendment, Senator Hollingworth for the committee.

**1999-1206s**

**01/09**

### Amendment to SB 167

Amend the bill by replacing all after the enacting clause with the following:

#### 1 Statement of Purpose.

I. Off-label use of a prescription drug occurs when a physician prescribes a medicine for a use other than what is approved for the product label by the Food and Drug Administration (FDA). Medically appropriate off-label use of FDA-approved drugs occurs when a physician makes a clinical judgment that is supported by studies in the medical literature. Off-label coverage has been approved by the federal government since 1993 for federal health programs.

II. In the current health care environment, there is significant pressure to control costs. The most important changes are occurring in how



patients get access to prescription drugs. It is essential to preserve the integrity of the physician's right to select a prescription drug that he or she believes most appropriately meets the needs of a patient. This bill supports the right of a physician to make a therapeutic decision that is fully supported by peer-reviewed clinical data.

2 New Section; Off-Label Prescription Drugs. Amend RSA 415 by inserting after section 6-f the following new section:

415:6-g Off-Label Prescription Drugs.

I. No insurer that issues or renews any individual policy of accident or health insurance providing benefits for medical or hospital expenses and providing coverage for prescription drugs shall exclude coverage for any such drug for a particular indication on the ground that the drug has not been approved by the Food and Drug Administration (FDA) for that indication, if:

(a) Such drug is recognized for treatment of such indication in one of the standard reference compendia or in the medical literature as recommended by current American Medical Association (AMA) policies; or

(b) Such drug is recognized by the commissioner of health and human services in accordance with RSA 415:18-i.

II. No such insurer providing coverage for prescription drugs shall exclude from coverage any drug for the treatment of cancer on the grounds that such drug has not been approved by the Food and Drug Administration for the treatment of that specific type of cancer, provided that such drug is recognized for the treatment of that specific type of cancer in one of the standard research compendia or in the medical literature.

III. Any coverage of a drug required by this section shall also include medically necessary services associated with the administration of the drug.

IV. This section shall not be construed to:

(a) Alter existing law with regard to provisions limiting the coverage of drugs that have not been approved by the FDA.

(b) Require coverage for any drug when the FDA has determined its use to be contra-indicated.

(c) Require coverage for experimental drugs not otherwise approved for any indication by the FDA.

V. In this section:

(a) "Medical literature" means at least 2 articles from major peer-reviewed medical journals that have recognized the drug's safety and effectiveness for treatment of the type of cancer for which it has been prescribed, unless 2 articles from major peer-reviewed medical journals have concluded that the drug is unsafe or ineffective or that the drug's safety and effectiveness cannot be determined for the treatment of the type of cancer for which it has been prescribed. Each article shall meet the uniform requirements for manuscripts submitted to biomedical journals established by the International Committee of Medical Journal Editors or be published in a journal specified by the United States Secretary of Health and Human Services pursuant to 42 U.S.C. 139X(t)(2)(b), as amended, as acceptable peer-reviewed medical literature. Each article must use generally accepted scientific standards and must not use case reports to satisfy this criterion. Medical literature shall not include publications or supplements that are sponsored to a significant extent by a pharmaceutical manufacturing company or a health carrier.

(b) "Off-label use of drugs" means when drugs are prescribed for treatments other than those stated in the labeling approved by the Food and Drug Administration.

(c) "Standard research compendia" means the United States Pharmacopoeia Drug Information and the American Hospital Formulary Drug Service Information.

3 New Section; Off-Label Prescription Drugs. Amend RSA 415 by inserting after section 18-h the following new section:

415:18-i Off-Label Prescription Drugs; Review Panel Established.

I. No insurer that issues or renews any policy of group or blanket accident or health insurance providing benefits for medical or hospital expenses and providing coverage for prescription drugs shall exclude coverage for any such drug for a particular indication on the ground that the drug has not been approved by the Food and Drug Administration (FDA) for that indication, if:

(a) Such drug is recognized for treatment of such indication in one of the standard reference compendia or in the medical literature as recommended by current American Medical Association (AMA) policies; or

(b) Such drug is recognized by the commissioner of health and human services pursuant to paragraph IV.

II. No such insurer providing coverage for prescription drugs shall exclude from coverage any drug for the treatment of cancer on the grounds that such drug has not been approved by the Food and Drug Administration for the treatment of that specific type of cancer, provided that such drug is recognized for the treatment of that specific type of cancer in one of the standard research compendia or in the medical literature.

III. Any coverage of a drug required by this section shall also include medically necessary services associated with the administration of the drug.

IV. The commissioner of the department of health and human services shall establish a panel to review off-label uses of drugs whenever a particular dispute about payment for such off-label use is brought to the commissioner. This 6 member panel shall include:

(a) One oncologist, appointed by the New Hampshire Oncology Society.

(b) One cardiologist, appointed by the New Hampshire chapter of the American College of Cardiology.

(c) Two physicians specializing in internal medicine, appointed by the New Hampshire Medical Society.

(d) One pediatrician, appointed by the New Hampshire Pediatric Society.

(e) One advanced registered nurse practitioner, appointed by the New Hampshire board of nursing.

V. In this section:

(a) "Medical literature" means at least 2 articles from major peer-reviewed medical journals that have recognized the drug's safety and effectiveness for treatment of the type of cancer for which it has been prescribed, unless 2 articles from major peer-reviewed medical journals have concluded that the drug is unsafe or ineffective or that the drug's safety and effectiveness cannot be determined for the treatment of the type of cancer for which it has been prescribed. Each article shall meet the uniform requirements for manuscripts submitted to biomedical journals established by the International Committee of Medical Journal Editors or be published in a journal specified by the United States Secretary of Health and Human Services pursuant to 42 U.S.C. 139X(t)(2)(b), as amended, as acceptable peer-reviewed medical literature. Each article must use generally accepted scientific standards and must not use case reports to satisfy this criterion. Medical literature shall not include publications or supplements that are sponsored to a significant extent by a pharmaceutical manufacturing company or a health carrier.

(b) "Off-label use of drugs" means when drugs are prescribed for treatments other than those stated in the labeling approved by the Food and Drug Administration.

(c) "Standard research compendia" means the United States Pharmacopoeia Drug Information and the American Hospital Formulary Drug Service Information.

4 Off-Label Prescription Drugs; Health Service Corporation. Amend RSA 420-A:2 to read as follows:

420-A:2 Applicable Statutes. Every health service corporation shall be governed by this chapter and the relevant provisions of RSA 161-H, and shall be exempt from this title except for the provisions of RSA 400-A:39, RSA 401-B, RSA 402-C, RSA 415-A, RSA 415-F, RSA 415:6, II(4), ***RSA 415:6-g***, RSA 415:18, V, RSA 415:18, VII(g), RSA 415:18, VII-a, RSA 415:18-a, ***RSA 415:18-i***, RSA 415:22, RSA 417, RSA 417-E, RSA 420-J, and all applicable provisions of title XXXVII wherein such corporations are specifically included. Every health service corporation and its agents shall be subject to the fees prescribed for health service corporations under RSA 400-A:29, VII.

5 Off-Label Drugs; Health Maintenance Organizations. Amend RSA 420-B:20, III to read as follows:

III. The requirements of RSA 400-A:39, RSA 401-B, RSA 402-C, ***RSA 415:6-g***, RSA 415:18, VII(g), RSA 415:18, VII-a, ***RSA 415:18-i***, RSA 415-A, RSA 415-F, RSA 420-G, and RSA 420-J shall apply to health maintenance organizations.

6 Effective Date. This act shall take effect 60 days after its passage.7

SENATOR HOLLINGWORTH: This bill declares that insurers providing coverage for prescription drugs shall not exclude coverage for off-label drugs for medical appropriate use. Off-label usage means that the FDA has approved a drug for one particular use, subsequently, perhaps years later, this drug is found to be beneficial for other medical needs. After a thorough testing and peer review process, the drug might be prescribed for healthcare professionals for use other than the original use purpose. Many drug manufacturers don't bother to move forward for further approval for other uses because it costs considerable amounts of money. It is very common for the medical community to discover that a drug approved many years before can be useful for and even critical in other treatments. For example, testimony from the American Cancer Society indicated that one-third of all drugs administered to cancer patients are off-label. Senate Bill 167 is necessary because some insurers deny coverage for prescription drug usage that is off-label. The committee heard testimony from many people in the healthcare field who strongly supported coverage of off-labeled prescriptions. Physicians testified that this bill would facilitate treating patients in most effective manners with drugs that are best suited for their conditions. Health care professionals do not prescribe a drug for particular use until it has been intensely tested and has been subject to peer review in professional publications and referrals. Senate Bill 167 was amended to refer only the most widely accepted publications in the medical fields. Doctors who treat cancer patients, HIV, mental health conditions. Children came from all of the state to tell the Insurance Committee that off-label prescriptions have become indispensable tools to them. The federal regulations require coverage for off-label usage, thus Medicaid patients have this benefit. Senate Bill 167 would bring state law into conformity with federal law. Thirty-two other states have passed legislation similar to this. Among those states and at the federal level, there is no evidence of ris-



ing costs resulting from this coverage. Off-label prescriptions are sensitive but not an additive measure. Senate Bill 167 applies only to plans that currently have prescription drug coverage and it only pertains to already covered prescription drugs. This does not expand insurance coverage formularies. This is a very important piece of legislation for consumers. The Insurance Committee unanimously voted it ought to pass. I ask you to vote yes. There will be an amendment to follow this as the amendment that appears in the calendar is incorrect.

**SENATOR SQUIRES:** I rise again to first of all to confess about the error. The error in the amendment in the calendar was mine. There is a reference in there that is incorrect, which is why we are going to have a floor amendment to fix it. The language in the calendar amendment refers only to drugs used in oncology and that is not my intent. I started out with some skepticism about this bill. Not in regard to oncology, but to the breath of it. I didn't understand exactly how the United States Pharmacopoeia works. Whether that is like the PDR...if you have a drug out there it goes in or how that happens...so I tracked that down and here is how it works. The drugs get in there after a review by a panel of professionals, physicians, pharmacologists and etceteras. They review the literature and will put in the pharmacopoeia or so-called off-label usage's. Once that happens, then the bill could be used for that purpose. There is another source in there, the hospital formulary, which is not quite as good and the idea of a peer reviewed journal. This came out of Medicaid changes in the early parts of this decade. There are protections here. It is pretty broad but I think that in the interest of the public in general, and the fact that there isn't a lot of evidence that says that it is going to increase the cost, it is an appropriate thing to do. I am sorry about the amendment. Senator Wheeler and I talked about that last night. I fully support her proposed floor amendment.

### **Amendment adopted.**

Senator Wheeler offered a floor amendment.

**1999-1237s**

**01/09**

### **Floor Amendment to SB 167**

Amend the bill by replacing all after the enacting clause with the following:

#### **1 Statement of Purpose.**

I. Off-label use of a prescription drug occurs when a physician prescribes a medicine for a use other than what is approved for the product label by the Food and Drug Administration (FDA). Medically appropriate off-label use of FDA-approved drugs occurs when a physician makes a clinical judgment that is supported by studies in the medical literature. Off-label coverage has been approved by the federal government since 1993 for federal health programs.

II. In the current health care environment, there is significant pressure to control costs. The most important changes are occurring in how patients get access to prescription drugs. It is essential to preserve the integrity of the physician's right to select a prescription drug that he or she believes most appropriately meets the needs of a patient. This bill supports the right of a physician to make a therapeutic decision that is fully supported by peer-reviewed clinical data.

2 New Section; Off-Label Prescription Drugs. Amend RSA 415 by inserting after section 6-f the following new section:

#### 415:6-g Off-Label Prescription Drugs.

I. No insurer that issues or renews any individual policy of accident or health insurance providing benefits for medical or hospital expenses and providing coverage for prescription drugs shall exclude coverage for any such drug for a particular indication on the ground that the drug has not been approved by the Food and Drug Administration (FDA) for that indication, if:

(a) Such drug is recognized for treatment of such indication in one of the standard reference compendia or in the medical literature as recommended by current American Medical Association (AMA) policies; or

(b) Such drug is recognized by the commissioner of health and human services in accordance with RSA 415:18-i.

II. Any coverage of a drug required by this section shall also include medically necessary services associated with the administration of the drug.

III. This section shall not be construed to:

(a) Alter existing law with regard to provisions limiting the coverage of drugs that have not been approved by the FDA.

(b) Require coverage for any drug when the FDA has determined its use to be contra-indicated.

(c) Require coverage for experimental drugs not otherwise approved for any indication by the FDA.

3 New Section; Off-Label Prescription Drugs. Amend RSA 415 by inserting after section 18-h the following new section:

#### 415:18-i Off-Label Prescription Drugs; Review Panel Established.

I. No insurer that issues or renews any policy of group or blanket accident or health insurance providing benefits for medical or hospital expenses and providing coverage for prescription drugs shall exclude coverage for any such drug for a particular indication on the ground that the drug has not been approved by the Food and Drug Administration (FDA) for that indication, if:

(a) Such drug is recognized for treatment of such indication in one of the standard reference compendia or in the medical literature as recommended by current American Medical Association (AMA) policies; or

(b) Such drug is recognized by the commissioner of health and human services pursuant to paragraph III.

II. Any coverage of a drug required by this section shall also include medically necessary services associated with the administration of the drug.

III. The commissioner of the department of health and human services shall establish a panel to review off-label uses of drugs whenever a particular dispute about payment for such off-label use is brought to the commissioner. This 6 member panel shall include:

(a) One oncologist, appointed by the New Hampshire Oncology Society.

(b) One cardiologist, appointed by the New Hampshire chapter of the American College of Cardiology.

(c) Two physicians specializing in internal medicine, appointed by the New Hampshire Medical Society.

(d) One pediatrician, appointed by the New Hampshire Pediatric Society.

(e) One advanced registered nurse practitioner, appointed by the New Hampshire board of nursing.

4 Off-Label Prescription Drugs; Health Service Corporation. Amend RSA 420-A:2 to read as follows:

420-A:2 Applicable Statutes. Every health service corporation shall be governed by this chapter and the relevant provisions of RSA 161-H, and shall be exempt from this title except for the provisions of RSA 400-A:39, RSA 401-B, RSA 402-C, RSA 415-A, RSA 415-F, RSA 415:6, II(4), ***RSA 415:6-g***, RSA 415:18, V, RSA 415:18, VII(g), RSA 415:18, VII-a, RSA 415:18-a, ***RSA 415:18-i***, RSA 415:22, RSA 417, RSA 417-E, RSA 420-J, and all applicable provisions of title XXXVII wherein such corporations are specifically included. Every health service corporation and its agents shall be subject to the fees prescribed for health service corporations under RSA 400-A:29, VII.

5 Off-Label Drugs; Health Maintenance Organizations. Amend RSA 420-B:20, III to read as follows:

III. The requirements of RSA 400-A:39, RSA 401-B, RSA 402-C, ***RSA 415:6-g***, RSA 415:18, VII(g), RSA 415:18, VII-a, ***RSA 415:18-i***, RSA 415-A, RSA 415-F, RSA 420-G, and RSA 420-J shall apply to health maintenance organizations.

6 Effective Date. This act shall take effect 60 days after its passage.

SENATOR WHEELER: I rise to offer a floor amendment. If you turn to your calendars on page 19 and 20, I can explain what the floor amendment does. At the bottom of page 19 in your calendar is language that the committee adopted and that is also carried on in the floor amendment. In the very last line of page 19 it refers to "the standard reference compendia" as Doctor Squires pointed out or in the medical literature and then it says, "As recommended by current American Medical Association Policies." Those policies very clearly spell out the reference material that should be used. That we believe, is sufficient, but this was a case of amending in haste and repenting at leisure. We added language on page 20 that needs to come out. On page 20, II should not be there. Also V should not be there because both of those paragraphs would make this bill apply only to treatment for cancer and that was never our intention. So the amendment simply removes II and V from page 20. Thank you very much.

SENATOR TROMBLY: Senator Wheeler, this amendment says to amend the bill by replacing everything after the enacting clause, correct?

SENATOR WHEELER: Yes.

SENATOR TROMBLY: So this amendment completely obliterates not only the bill, but the amendment we just adopted. Right?

SENATOR WHEELER: Yes, that is correct.

SENATOR TROMBLY: So why did we vote to accept the bad amendment when this was coming forward?

SENATOR WHEELER: I have never understood this process. That is an excellent question. I believe, Senator Trombly, that in the House, we would not do that.

SENATOR TROMBLY: I agree.

**Floor Amendment adopted.**

**Ordered to third reading.**

**SB 175-FN**, requiring insurance coverage for prescription contraceptive drugs and devices and for contraceptive services. Insurance Committee. Vote 6-1. Ought to pass with amendment, Senator Wheeler for the committee.



1999-1197s

01/09

**Amendment to SB 175-FN**

Amend the bill by replacing all after section 1 with the following:

2 New Section; Coverage for Prescription Contraceptive Drugs and Devices and for Contraceptive Services. Amend RSA 415 by inserting after section 18-h the following new section:

415:18-i Coverage for Prescription Contraceptive Drugs and Devices and for Contraceptive Services. Each insurer that issues or renews any group or blanket policy of accident or health insurance providing benefits for medical or hospital expenses, which provides coverage for outpatient services shall provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state, coverage for outpatient contraceptive services under the same terms and conditions as for other outpatient services. "Outpatient contraceptive services" means consultations, examinations, procedures, and medical services, provided on an outpatient basis and related to the use of contraceptive methods to prevent pregnancy which has been approved by the U.S. Food and Drug Administration. Each insurer that issues or renews any policy of group or blanket accident or health insurance providing benefits for medical or hospital expenses which provides a prescription rider shall cover all prescription contraceptive drugs and devices approved by the U.S. Food and Drug Administration under the same terms and conditions as other prescription drugs. The benefits included in this section shall not be subject to any greater deductible than any other benefits provided by the insurer. The coinsurance required by the enrolled participant may not exceed the amount allowed under the contract for the reasonable and customary charge for the service provided. Insurers are prohibited from:

I. Providing monetary payments or rebates to a covered person to encourage such covered person to accept less than the minimum protections available under this section.

II. Penalizing or otherwise reducing or limiting the reimbursement of a health care professional because such professional prescribed contraceptive drugs or devices, or provided contraceptive services in accordance with this section.

III. Providing incentives to a health care professional to induce such professional to withhold from a covered person contraceptive drugs, devices, or services.

IV. Substituting an alternative contraceptive method, device, or drug that has not been prescribed by the provider.

3 New Section; Coverage for Prescription Contraceptive Drugs and Devices and for Contraceptive Services. Amend RSA 420-A by inserting after section 17-b the following new section:

420-A:17-c Coverage for Prescription Contraceptive Drugs and Devices and for Contraceptive Services. Every health service corporation and every other similar corporation licensed under the laws of another state that issues or renews any policy of group or blanket accident or health insurance providing benefits for medical or hospital expenses, which provides coverage for outpatient services shall provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state, coverage for outpatient contraceptive services under the same terms and conditions as for other outpatient services. "Outpatient contraceptive services" means consultations, examinations, procedures, and medical services, provided on an outpatient ba-

sis and related to the use of contraceptive methods to prevent pregnancy which has been approved by the U.S. Food and Drug Administration. Each health service corporation and every other similar corporation licensed under the laws of a different state that issues or renews any group or blanket policy of accident or health insurance providing benefits for medical or hospital expenses which provides a prescription rider shall cover all prescription contraceptive drugs and devices approved by the U.S. Food and Drug Administration under the same terms and conditions as other prescription drugs. The benefits included in this section shall not be subject to any greater deductible than any other benefits provided by the insurer. The coinsurance required by the enrolled participant may not exceed the amount allowed under the contract for the reasonable and customary charge for the service provided. Insurers are prohibited from:

I. Providing monetary payments or rebates to a covered person to encourage such covered person to accept less than the minimum protections available under this section.

II. Penalizing or otherwise reducing or limiting the reimbursement of a health care professional because such professional prescribed contraceptive drugs or devices, or provided contraceptive services in accordance with this section.

III. Providing incentives to a health care professional to induce such professional to withhold from a covered person contraceptive drugs, devices, or services.

IV. Substituting an alternative contraceptive method, device, or drug that has not been prescribed by the provider.

4 New Section; Coverage for Prescription Contraceptive Drugs and Services and for Contraceptive Services. Amend RSA 420-B by inserting after section 8-g the following new section:

420-B:8-gg Coverage for Prescription Contraceptive Drugs and Devices and for Contraceptive Services. Every health maintenance organization and every other similar corporation licensed under the laws of another state that issues or renews any policy of group or blanket health insurance providing benefits for medical or hospital expenses, which provides coverage for outpatient services shall provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state, coverage for outpatient contraceptive services under the same terms and conditions as for other outpatient services. "Outpatient contraceptive services" means consultations, examinations, procedures, and medical services, provided on an outpatient basis and related to the use of contraceptive methods to prevent pregnancy which has been approved by the U.S. Food and Drug Administration. Each health maintenance organization and every other similar corporation licensed under the laws of another state that issues or renews any group or blanket health insurance providing benefits for medical or hospital expenses which provides a prescription rider shall cover all prescription contraceptive drugs and devices approved by the U.S. Food and Drug Administration under the same terms and conditions as other prescription drugs. The benefits included in this section shall not be subject to any greater deductible than any other benefits provided by the insurer. The coinsurance required by the enrolled participant may not exceed the amount allowed under the contract for the reasonable and customary charge for the service provided. Insurers are prohibited from:

I. Providing monetary payments or rebates to a covered person to encourage such covered person to accept less than the minimum protections available under this section.

II. Penalizing or otherwise reducing or limiting the reimbursement of a health care professional because such professional prescribed contraceptive drugs or devices, or provided contraceptive services in accordance with this section.

III. Providing incentives to a health care professional to induce such professional to withhold from a covered person contraceptive drugs, devices, or services.

IV. Substituting an alternative contraceptive method, device, or drug that has not been prescribed by the provider.

5 Effective Date. This act shall take effect 60 days after its passage.

**1999-1197s**

### AMENDED ANALYSIS

This bill requires group insurance coverage for prescription contraceptive drugs and devices and for contraceptive services.

SENATOR WHEELER: Senate Bill 175 is not a mandate for prescription drug coverage or for outpatient service coverage. The amendment says that a policy which provides coverage for outpatient services shall provide coverage for outpatient contraceptive services under the same terms and conditions as for other outpatient services. The amendment further states that a policy which provides a prescription rider shall cover all prescription contraceptive drugs and devices approved by the U.S. Food and Drug Administration under the same terms and conditions as other prescription drugs. Another important section of the bill prohibits the substitution of an alternative contraceptive method device or drug that has not been prescribed by the provider. Senate Bill 175 remedies a basic inequity in insurance coverage. While most insurance plans routinely cover outpatient medical services and prescriptions, many insurance plans specifically exclude coverage for prescription contraceptive drugs and devices. Both traditional and indemnity insurers and managed care plans shortchange women in drug coverage. Nearly half of indemnity plans, although this bill no longer covers indemnity plans, but just from a statistical point of view, nearly half of them, 49 percent will not cover any reversible method of contraception. While HMO's have a better record, just 39 percent of HMO's routinely cover all five reversible methods, which are the birth control pills, implants, which is Norplant, Depo-Provera, which is an injectable, IUD and the diaphragm. Obviously this is a matter of parity and gender equity. Contraception is not a frill, this statistic really was amazing to me when I thought about it, it was true, the typical American woman spends 90 percent of her reproductive life seeking to avoid pregnancy. Women spend about 68 percent more in out-of-pocket expenses for health care than men. One of the biggest contributors to that expense is reproductive health, including birth control. For every dollar spent on contraceptives, insurers save \$3 on prenatal and infant care. According to the HIAA their average out-of-pocket costs for oral contraceptives is approximately \$25 a month. The estimated increase in insurance premiums for coverage of all FDA approved contraceptives is \$16-\$21 annually. The cost of an uncomplicated childbirth is between \$3,000-\$6,000. New Hampshire Medicaid recipients and New Hampshire state employees already have this benefit; therefore, there should be no fiscal impact and it truly is a matter of parity and equity. I urge your support for SB 175.

SENATOR FRANCOEUR: I rise in opposition to SB 175 this week. It seems almost horrendous to me that last week we sat here and debated mandating fertility treatment for those who couldn't have children. This week we come back and mandate insurance to cover prescription con-



traceptive drugs so that they don't have them. It seems like we have both ends of the spectrum here. If this is so cost effective and it is going to save the insurance companies money, why wouldn't they do it themselves today? If it is, then they would do it. But we have to turn around and tell them that they have to pay for this, you have to do this...you are going to get a benefit that is going to save us money and reduce your costs. Either I missed something or all of their statistics do. I didn't hear any of the health carriers coming in here and saying "hey we are all in favor of this, this is going to save us all kinds of money." It is not there. So all that this is going to do is drive up our costs, which is already high enough in the state of New Hampshire. I am sure as Senator Wheeler has mentioned in her speech, there are others who believe that they shouldn't be paying for somebody else's method of contraception or their drugs to prevent it. I would ask the Senate to turn down the motion of ought to pass with amendment and then at that time, I would make a motion of inexpedient to legislate. Thank you.

**SENATOR WHEELER:** Senator Francoeur, do you realize that over 50 percent of all pregnancies in the United States are unintended or unwanted? That the United States has the highest unintended pregnancy rate in the developed world? And that the point of agreement between those who are pro choice and those who are pro life ought to be in advancing policies that reduces the occurrence of abortion in the first instance? **TAPE CHANGE** So do you believe that I think that we should be together on this issue?

**SENATOR FRANCOEUR:** I believe that you believe that, Senator Wheeler. I wouldn't believe though that when we look at the statistics and say 50 percent are unwanted. I don't have any unwanted in my family. It depends on how you ask the question and who you ask the question to. That is what I believe, Senator Wheeler.

**SENATOR WHEELER:** Would you believe, Senator Francoeur, I didn't actually say that it was all wanted, I said unintended or unwanted. You can have...I am sure that you and I agree that...you would believe that I would believe that you can have an unintended pregnancy that turns out to be quite wanted?

**SENATOR FRANCOEUR:** I would agree with you on that.

**Question is on the adoption of the committee amendment.**

**A roll call was requested by Senator Francoeur.**

**Seconded by Senator Fraser.**

**The following Senators voted Yes: Gordon, Fraser, Below, McCarley, Trombly, Blaisdell, Fernald, Squires, Larsen, Russman, D'Allesandro, Wheeler, Hollingworth, Cohen.**

**The following Senators voted No: F. King, Johnson, Disnard, Roberge, Francoeur, Krueger, Brown, J. King, Klemm.**

**Yeas: 14 - Nays: 9**

**Senator Pignatelli Rule #42.**

**Amendment adopted.**

**Ordered to third reading.**

**SB 228-FN, relative to spousal benefits upon the death of certain retired group II members of the New Hampshire retirement system. Insurance Committee. Vote 7-0. Ought to pass with amendment, Senator J. King for the committee.**

1999-1144s

10/09

**Amendment to SB 228-FN**

Amend the bill by replacing sections 1 and 2 with the following:

1 New Paragraph; Benefits Upon Member's Death After Retirement. Amend RSA 100-A:12 by inserting after paragraph I the following new paragraph:

I-a. In addition to any other provision of this section, upon the death of a currently retired group II member of the New Hampshire retirement system or any predecessor system, who retired with a full service or ordinary disability retirement allowance prior to April 1, 1987, there shall be paid to the member's spouse at the time of retirement, if surviving, an allowance to continue until the spouse's death or remarriage equal to 50 percent of the service or ordinary disability retirement allowance payable to the retired member prior to the member's death. The total cost of terminally funding the benefits provided by this paragraph shall be funded from the special account established under RSA 100-A:16, II(h).

2 Right to Elect Optional Retirement Allowance; Certain Group II Retired Members. Notwithstanding any provision of RSA 100-A:13 to the contrary, any currently retired group II member of the New Hampshire retirement system or a predecessor system, who retired prior to April 1, 1987 with a full service or ordinary disability allowance and who originally elected and are receiving the 100 percent joint and survivor option, or 100 percent option, will be allowed to elect a 50 percent joint survivor, 50 percent pop up option, or no option, prospectively. Those members who elected and are receiving a 50 percent joint survivor or 50 percent pop up option may continue their option or no option, prospectively, as provided by RSA 100-A:13. The optional allowance shall be of equal actuarial value to the allowance the retiree is receiving as of July 1, 1999. The total benefit payable to a survivor shall not exceed the amount payable to the member.

SENATOR J. KING: This bill provides for a retirement allowance for the surviving spouse of a retired group II member who retired before April 1, 1987. The spousal benefit has been automatic since 1987, but before that the retirees had to choose whether they wanted a surviving spouse allowance or not. Most of the people who this applies to had such low salaries and retirement allowance that they couldn't afford a reduced benefit at that time. Who could have foreseen the high health care cost shooting up so dramatically. Healthcare is one of the most pressing concerns for seniors and these former firemen and policemen are worried that their widows could live in poverty without enough money for healthcare. This bill would give group II retirees a chance to choose to reduce their benefits now in order to provide for their surviving spouse, should the spouse survive them. Any increase in the overall payout of benefits will come from the special fund set up by these group II members and fund it with their contributions. The fund can afford this with no risk to any upcoming COLA's. Some of these people are in dire straits. This is their fund too, and they deserve this bill to pass. Thank you very much.

**Amendment adopted.**

**Referred to the Finance Committee (Rule #24).**

**Recess.**

**Senator Blaisdell in the Chair.**

**HB 258**, establishing Gold Star Mother's Day honoring mothers who lost sons or daughters while on duty in the armed forces. Internal Affairs Committee. Vote 3-0. Ought to Pass, Senator D'Allesandro for the committee.

**SENATOR D'ALLESANDRO:** This bill establishes the first Sunday after Easter as Gold Star Mother's Day. The day would recognize and honor those mothers that lost sons or daughters who were on duty in the armed forces. The committee did not hear one word that would suggest that this bill was not appropriate. In fact, the committee believes that honoring the mothers of these people who gave their lives for our country and the armed services is indeed appropriate. The committee recommends this bill ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 583**, extending the reporting date for the committee studying the issue of updating New Hampshire laws related to fences. Internal Affairs Committee. Vote 3-0. Ought to Pass, Senator Francoeur for the committee.

**SENATOR FRANCOEUR:** Over the decades, laws regarding fences, boundaries, property lines, cemeteries and even preservation of the state stone walls have been enacted in various sections of the law. Some of these sections may conflict and it is important to study the issue to resolve any problems that could potentially lead to boundary disputes. The committee recommends this bill ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 215**, placing restrictions on name changes for certain felons. Judiciary Committee. Vote 5-1. Ought to pass with amendment, Senator Brown for the committee.

**1999-1109s**

**05/10**

### **Amendment to HB 215**

Amend the title of the bill by replacing it with the following:

**AN ACT** placing restrictions on name changes for certain felons and imposing a duty to notify certain law enforcement agencies when changes are made.

Amend the bill by replacing all after the enacting clause with the following:

1 Change of Name. Amend RSA 547:3-i to read as follows:

547:3-i Change of Name.

**I.** The probate court may grant the petition of any person to change the name of that person or the name of another person, *with the exception of a person serving a prison sentence or on probation or parole, or required to register as a sexual offender or an offender against children pursuant to RSA 651-B*. The court shall not require the petitioner to obtain consents to the name change. *Except as provided in paragraph II*, the court may proceed with or without notice, in accordance with RSA 550:4.

**II.** *The court may override the exception under paragraph I only if the petitioner makes a compelling showing that a name change is necessary.*



III. Before the probate court may grant a change of name pursuant to this section, the person petitioning for a name change shall serve a copy of the petition on the department of corrections if the person is incarcerated, or on probation or parole, or on the department of safety if the person is required to register as a sexual offender or an offender against children and is no longer subject to supervision by the department of corrections.

2 Change of Address; Duty to Inform. Amend RSA 651-B:5 to read as follows:

651-B:5 Change of *Name or Alias, or* Address; Duty to Inform. When any person required to be registered under this chapter changes residence, *or their name or alias*, the person shall give written notification of the person's new address *name, or alias* to the local law enforcement agency to which he last reported under RSA 651-B:4 within 10 days of such change of residence, *name, or alias*. Such notice shall not relieve the person of the duty to report under RSA 651-B:4 at the new place of residence. The local law enforcement agency receiving such notice shall forward a copy to the division within 3 days after receipt. The division shall notify the local law enforcement agency at the new place of residence, or the appropriate out-of-state law enforcement agency if the new place of residence is outside New Hampshire, and shall include such change-of-address *or change-of-name* information in the LENS system.

3 Effective Date. This act shall take effect January 1, 2000.

SENATOR BROWN: Mr. President, I rise in support of HB 215 as amended, which places restrictions on the rights of persons serving a prison sentence or on probation or parole or sexual offenders and offenders against children to legally change their names. If enacted, this bill would preclude those I have just identified from changing their names unless they can demonstrate a compelling need. Supporters of this bill testified that one of its primary purposes is to prevent sexual offenders from bypassing the intent of Megan's Law, which requires local police departments to make a list of sex offenders available to the public. The bill sponsors noted those sex offenders and offenders against children are changing their names while in prison. This name change allows sex offenders to leave prison and look for residences under another name. As a result, a sex offender may live in a neighborhood and his new name will not appear on the list of sex offenders and the community will not be aware that that sex offender lives in the community. The sponsors of HB 215 recognized that there may be compelling reasons for a sex offender to get a name change such as a threat to bodily harm. House Bill 215 states that a probate court may order a name change to a sex offender if there has been a compelling showing that a name change is necessary. In the event that a sex offender meets this burden, the sex offender must serve a copy of the petition on the Department of Corrections or the Department of Safety. Section two of this bill offers an amendment which provides that a sex offender must report a new name or alias to local law enforcement agencies in the same way that he would be required to report where he lives under Megan's Law. Supporters of this bill believe that this legislation will protect children in communities. One sponsor testified that the safety of a child of one of his constituents was threatened by a sex offender who had changed his name.

The members of the Judiciary Committee voted 5 to 1 that this bill ought to pass as amended. I strongly urge you to vote also that this bill ought to pass as amended.

**Amendment adopted.**

**Ordered to third reading.**

**HB 236-FN-L**, relative to felonious disarming of a law enforcement officer. Judiciary Committee. Vote 5-0. Ought to Pass, Senator Fernald for the committee.

SENATOR FERNALD: This bill makes it a felony to disarm a police officer when he or she is in the line of duty. We heard testimony of a large number of officers who are wounded or killed because their weapons were taken away from them and then used on them. This is an important act to provide some protection to our law enforcement people and I ask you to join the committee in supporting the motion of ought to pass.

**Adopted.**

**Referred to the Finance Committee (Rule #24).**

**HB 272-FN**, relative to the use of laser pointing devices. Judiciary Committee. Vote 5-0. Ought to pass with amendment, Senator Fernald for the committee.

**1999-1125s**

**05/09**

### **Amendment to HB 272-FN**

1 New Section; Conduct Involving Laser Pointing Devices. Amend RSA 631 by inserting after section 3 the following new section:

631:3-a Conduct Involving Laser Pointing Devices.

I. Any person who knowingly shines the beam of a laser pointing device at an occupied motor vehicle, window, or person shall be guilty of a violation and the laser pointing device shall be forfeited upon conviction.

II. Notwithstanding the provisions of paragraph I, any person who knowingly shines the beam of a laser pointing device at a law enforcement officer or law enforcement vehicle shall be guilty of a class A misdemeanor and the laser pointing device shall be forfeited upon conviction.

III. It shall be an affirmative defense under this section if the laser pointing device was used in an organized meeting or training class by the instructor or speaker. Nothing in this section shall be construed so as to limit the use of medical lasers by qualified medical personnel or laser devices utilized by law enforcement personnel in the performance of their official duties.

2 Effective Date. This act shall take effect January 1, 2000.

**1999-1125s**

### **AMENDED ANALYSIS**

This bill criminalizes certain uses of laser pointing devices. Senator Fernald moved to have **HB 272-FN**, relative to the use of laser pointing devices, laid on the table.

**Adopted.**

**LAI D ON THE TABLE**

**HB 272-FN**, relative to the use of laser pointing devices.

**HB 357**, establishing a committee to study and investigate issues related to investigations, trials, convictions, and sentencing of sex offenders. Judiciary Committee. Vote 6-0. Ought to Pass, Senator Pignatelli for the committee.

**SENATOR PIGNATELLI**: I rise to recommend that the Senate vote ought to pass on HB 357. Many people came to testify on behalf of this bill. Supporters testified that they were the wives, relatives, parents and friends of individuals who they believed were wrongfully convicted of a crime involving a sex offense. Some supporters testified that they believed that victims, who are often children, are being pressured to testify falsely. Many of the supporters believe that there are innocent people in prison because the system for the prosecution of sex offenders is skewed and unfair. Supporters also raised issues concerning the sex offender program at the prison. They believe that the program is too limited in size and not available to enough prisoners. In addition, supporters testified that the requirement of the sex offender program is that the sex offender must admit guilt in order to participate in the program, and they felt that this is an unfair requirement for those individuals who claim to be innocent. As you can see from the testimony, these are issues worthy of study. The Judiciary Committee recommends ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 66**, relative to structured settlements. Judiciary Committee. Vote 6-0. Rereferred to Committee, Senator Pignatelli for the committee.

**SENATOR PIGNATELLI**: I rise to recommend that the Senate rerefer SB 66 and also SB 126 which is the next bill that we will be taking up. These bills were both heard before the Judiciary Committee and they would establish requirements to protect persons who are recipients of structured settlements from being the victims of companies which seek to purchase the structured settlements at a financially disadvantaged price to the structured settlement recipient; and often with not disclosure of the heavily discounted purchase price and the extra cost involved. A structured settlement is an arrangement whereby a person agrees to make future periodic payments to another person who has settled a tort claim for either personal injury or workers' compensation. Many supporters of SB 66 and SB 126 testified that persons who are the recipients of structured settlements have great need for these payments because they are victims of personal or workplace injuries. They testified also that these structured settlement recipients are put at risk by companies who actively pursue the purchase of structured settlements at a great financial disadvantage to the recipients. Often persons who are persuaded to transfer, have no disclosure or no knowledge of the heavily discounted value that they will receive, or other charges or fees that they may be obligated to pay as a result of the transfer. To protect the participants of structured settlements of transferring their assets without full knowledge of the repercussions, SB 126 provides requirements to be met with each such transfer. Senate Bill 126 requires among other things that 1) there be full disclosure of the discounted value of the structured settlement. 2) all charges such as broker's commission, service charges, application fees and etceteras, are reported to the structured settlement



recipient. 3) the structured settlement recipient will receive advice from an independent council before the transfer. 4) Transfers be approved by the Superior Court. Senate Bill 66 contains similar language. It is the Judiciary Committee's opinion that these bills include important public policy issues and that they should be examined carefully. As you can see, it is a very complicated and complex issue. Unfortunately, the Judiciary Committee was not able to spend the necessary time to hear these bills fully. As a result, the Judiciary Committee recommends that the Senate rerefer SB 66 and SB 126 so that they can be fully discussed and considered. Thank you very much.

**Adopted.**

**SB 66 is rereferred to the Judiciary Committee.**

**SB 126**, requiring approval of the superior court or, in the case of workers' compensation, the labor commissioner, as a precondition to transfer of any structured settlement payment rights. Judiciary Committee. Vote 6-0. Rereferred to Committee, Senator Pignatelli for the committee.

**Adopted.**

**SB 126 is rereferred to the Judiciary Committee.**

**SB 151**, relative to assignment of judges. Judiciary Committee. Vote 5-0. Inexpedient to Legislate, Senator Wheeler for the committee.

**SENATOR WHEELER:** On behalf of the Senate Judiciary Committee I rise to recommend that SB 151 be inexpedient to legislate at this time. This is a bill that I made a report on several weeks ago and it was re-committed. Nothing has changed except that the vote used to be 8-0 and now it is 5-0 inexpedient, so fewer people were in the room the last time. The concern is that the random assignment of each case could not be accomplished in an effective manner and that the bill would present problems with the consolidation of cases, and would interfere with the managing of case assignment for judges in each court and that there would be administrative problems arising due to the impact of this bill. There will be another bill that Judiciary will be bringing to you next week regarding the assignment of judges, and that had a different vote from the committee. I think that you can feel fairly comfortable in agreeing with the committee recommendation of inexpedient to legislate on this one. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 158-FN**, relative to indecent exposure. Judiciary Committee. Vote 5-0. Ought to pass with amendment, Senator Cohen for the committee.

**1999-1106s**

**05/10**

#### **Amendment to SB 158-FN**

Amend RSA 645:1, I(b) as inserted by section 1 of the bill by replacing it with the following:

(b) Purposely performs any act of sexual penetration or sexual contact on himself or herself or another in the presence of a child who is at least 13 years of age and less than 16 years of age.

Amend RSA 645:1, II(a) as inserted by section 1 of the bill by replacing it with the following:

(a) Such person purposely performs any act of penetration or sexual contact on himself or herself or another in the presence of a child 12 years of age or younger.

SENATOR COHEN: I rise in support of SB 158. This bill increases the penalty for individuals convicted of indecent exposure and lewdness in certain circumstances. The sponsors in support of this bill testified that the seriousness of the crimes of indecent exposure and lewdness in front of young children should be treated as a felony. I will spare you the details of the offenses covered under this bill. It recognizes the severity of these crimes by increasing the penalty for repeated offenses. The increased penalty or punishment for these crimes should serve for a deterrent for future offenders. Two supporters of the legislation argued the need for SB 158 by describing how each of their daughters was victimized. Because of the limited penalty under the current law, an offender who engaged in conduct prohibited by RSA 645 in front of two-year-old children will serve only six months in prison for offense. Other supporters noted that this legislation would serve to protect the public and to protect the children. This bill is written to punish those who commit indecent exposure with the intent to do something more harmful. Among the supporters of this bill is the New Hampshire attorney general's office and we recommend that SB 158 ought to pass amended.

**Amendment adopted.**

**Referred to the Finance Committee (Rule #24).**

**SB 172**, relative to representation by a citizen in a court proceeding. Judiciary Committee. Vote 5-0. Ought to pass with amendment, Senator Wheeler for the committee.

**1999-1108s**

**04/01**

### **Amendment to SB 172**

Amend RSA 311:1 as inserted by section 1 of the bill by replacing it with the following:

311:1 Right to Appear, etc. A party in any cause or proceeding may appear, plead, prosecute or defend in his or her proper person, that is, pro se, or by any citizen of good character. ***For the purposes of this section, a citizen shall be presumed to be of good character unless demonstrated otherwise.***

SENATOR WHEELER: I rise to recommend that SB 172 as amended ought to pass. This bill amends the requirements under current law, RSA 311:1, allowing a citizen to represent a party to a legal proceeding before the court. This statute applies instances when an individual chooses to have someone who is not an attorney represent him or her in court. Currently the statute states that a party in any cause or proceeding may appear, plead, prosecute or defend in his or her proper person, that is per se or by any citizens of good character. The discussion was how "good character" should be defined. Some people said that the good character language was being used as a sword to disqualify a non-lawyer citizen as an advocate from the case. The primary purpose of the bill and its amendment, is to acknowledge that good character is essential before a non-lawyer can represent another person in court, but until proven otherwise, there should be a presumption that a non-lawyer advocate is of good character. There is no question that representation of a person in court is a privilege, or the judges must have assurance that persons appearing before them are honest and forthright. Therefore, if the opposing party has reason to believe that a citizen advocate is not of good

character, the opposing party must prove this by the preponderance of the evidence or that more likely than not, the person is not of good character. The Senate Judiciary Committee believes that SB 172 acts to protect honesty in the courtroom while expressing confidence that our citizens are of good character. The Senate Judiciary Committee voted 5-0 that this bill be ought to pass. Thank you.

**Amendment adopted.**

**Ordered to third reading.**

**SB 201-FN**, reclassifying non-support as a felony under certain circumstances. Judiciary Committee. Vote 5-0. Ought to Pass, Senator Pignatelli for the committee.

SENATOR PIGNATELLI: I rise to strongly urge the Senate to pass SB 201-FN. This legislation acts to reclassify the worse cases of nonpayment of child support from a misdemeanor to a class b felony. If enacted, this bill will provide greater child support enforcement capability to the state and therefore, more child support to the children of this state whose absent parents refuse repeatedly to accept financial responsibility for their children. The testimony in support of this bill was emotional and impassioned. Several mothers described the persistent but fruitless efforts that they have made to try to obtain child support from the fathers of their children. One woman testified that although she has gone to court numerous times to beg for help in retrieving child support, she has found that her former husband can refuse to pay consistently with minimal consequences. This mother views her former husband's actions as willful and neglectful, for which there is no punishment to make him accountable. Her former husband owes child support in the amount of \$38,000 and one of their two children has since grown up and is now over the age of 18. A representative from the Department of Health and Human Services testified that this bill will give the state an additional tool to prosecute those who continue to fail to pay their child support. Because the crime of nonpayment of child support is only a misdemeanor now, other states often will not act upon a warrant for the arrest of parents who owe many thousands of dollars for child support. This bill will add some crucial teeth to child support enforcement and will be a significant deterrent to the parents of children who have consistently refused to pay child support for their children. Opponents of the bill testified that it is often difficult for parents to meet child support obligations; however, let me stress to you that SB 201 is aimed at the worst of these offenders. It is intended to apply only to those offenders who have not paid child support, any child support for over a year and who owe an amount greater than \$10,000. It will also apply to offenders who have been previously convicted for nonsupport or who have been convicted of a similar offense in another state. In all other cases, the nonpayment of child support will remain a class A misdemeanor. The Department of Health and Human Services representatives testified that just as the criminal misdemeanor is the last resort when seeking to enforce child support. If this offense were raised to a Class B felony, it will be used as a tool when all other efforts have failed. The Department of Health and Human Services recognizes that it is often difficult for parents to pay child support, and they make every effort to work it out with the parent...the payment of child support before seeking criminal prosecution, I would ask that my fellow colleagues in the Senate give serious consideration to this bill which will permit greater child support



enforcement and therefore more child support to children. The Judiciary Committee voted 5-0 that SB 201 ought to pass and I ask you to do the same. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #24).**

**SB 227-FN**, establishing a gambling business felony. Judiciary Committee. Vote 6-0. Ought to pass with amendment, Senator Fernald for the committee.

**1999-1098s**

**08/09**

### **Amendment to SB 227-FN**

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Business Conducting Illegal Gambling. Amend RSA 647:2 by inserting after paragraph I the following new paragraph:

I-a.(a) A person is guilty of a misdemeanor if such person conducts, finances, manages, supervises, directs, or owns all or part of a business and such person knowingly and unlawfully permits gambling on the premises of the business.

(b) A person is guilty of a class B felony if such person knowingly and unlawfully conducts, finances, manages, supervises, or directs any gambling activity which:

(1) Has had gross revenue of \$2,000 in any single day;

(2) Has been or remains in substantially continuous operation for a period in excess of 10 days; or

(3) Accepts wagers exceeding \$5,000 during any 30 day period on future contingent events.

2 Forfeiture. Amend RSA 647:2, III to read as follows:

III. **Any [all] implements, equipment, and apparatus used *in violation of this section, and any money or proceeds wagered or gained* in violation of this section, shall be forfeited.**

3 Effective Date. This act shall take effect January 1, 2000.

**1999-1098s**

### **AMENDED ANALYSIS**

This bill:

I. Makes it a misdemeanor for a person to knowingly and unlawfully permit gambling on the premises of a business conducted, financed, managed, supervised, directed, or owned by such person.

II. Makes it a felony for a person to knowingly and unlawfully conduct, finance, manage, supervise, or direct any gambling activity of a certain magnitude or duration.

III. Requires persons convicted of illegal gambling operations to forfeit any property including money or proceeds wagered or gained by such gambling operations.

**SENATOR FERNALD:** The current status of the law in New Hampshire is that illegal gamblers are guilty of a misdemeanor. In addition, if you are running a gambling operation illegally, you are guilty of a misdemeanor. This bill makes two changes to this existing law concerning illegal gambling. First, for those who run the gambling operation, the crime has changed from a misdemeanor to a felony. Second, the forfeiture provisions of the existing law have changed. Currently, gambling equipment is forfeited and that is all. This bill would allow also the for-

feiture of cash that is gambled as part of the gambling operation. We heard quite a bit of testimony about this bill. What we heard was that when the police are prosecuting illegal gambling operations, that the fact that it is just a misdemeanor means that there is not as much deterrent to out-of-state gambling organized crime interests that want to come here and set up illegal gambling operations. We also heard that at times when they do make gambling arrest, there is money seized, and it is evidence, and yet when the case is done, because there is no forfeiture of the gambling money, the money goes back to the gambler after he is convicted. I should also point out what this does not do. It does not change the existing law concerning the real estate where the gambling occurs. There has been a lot of talk about fraternal organizations or veterans clubs or whatever...that they are all going to be felons now. That is not true. We preserved the existing law that if you own the establishment where the gambling is occurring, you are guilty of a misdemeanor under this bill just as you are now. I should also point out who is a felon and who isn't. You have to be over \$2,000 a day and \$5,000 a week to be in the felony range. If the gambling ring does less business than that then it is still just a misdemeanor. I would ask you to support the committee in the recommendation of ought to pass.

SENATOR JOHNSON: As you know, the amendment which appears on page 25 is now the bill. I just want to clarify a couple of points that came up. One of the questions was, can a person playing poker for a value be charged with a felony under section 1-b? The answer is no. This section requires proof beyond a reasonable doubt that the person charged conducts, finances, manages, supervises or directs a gambling activity. A person playing cards cannot fall under this category, since they are merely participating in the game. Moreover, participation alone cannot qualify for this offense since criminal offenses are construed strictly and the legislative intent controls. The intent beyond this section is to create a Class B felony for those individuals overseeing gambling activities that result in substantial revenues to those who control the activity, not to anyone individually participating in the activity. Again, if the person wins a substantial amount of money, that person is not committing a felony, since they are not in charge of overseeing a gambling activity. They are merely a participant. In addition, it would be very difficult to prove that there would be any gross revenue gained by the operation especially over \$2,000. I ask that you support the committee recommendation of ought to pass.

### SUBSTITUTE MOTION

**Senator McCarley moved to substitute rerefer for ought to pass with amendment.**

SENATOR MCCARLEY: I rise to speak to the motion of rerefer. I believe that we heard parts of this bill attached to something else last year and I certainly am one Senator who had some problems with it last year and I continue to. I do acknowledge that the Judiciary Committee has done a lot of work on the bill, and I know that they have been looking at some of the federal regulations, and I think that there may be some inconsistencies relative to the federal, and what has now been done in this amendment. I also feel that the issue of the cost effectiveness that we have heard a lot about and why law enforcement doesn't choose to try to enforce this is that it isn't worth it to them. We have on our books now, enhanced penalties for someone who is, as a major source of livelihood, is doing gambling...that you can put people in jail for up to five years. I

think that does provide law enforcement, I would think, with some of the kind of incentives that they have talked about needing for those people, that they are really serious about trying to catch. So again, I commend the Judiciary Committee and I would like to ask them... I don't think that we are under any pressing time frame, to give this a chance to have a little more time for study.

SENATOR JOHNSON: Senator McCarley, could you give me the statute that require that five year penalty?

SENATOR MCCARLEY: RSA 651:6.

SENATOR JOHNSON: Thank you.

SENATOR MCCARLEY: Certainly.

SENATOR FRASER: Mr. President, I rise in opposition to the SB 227 as amended, and in support of the motion to rerefer. As many of you know, I like to gamble. A lot of people like to gamble, and although I understand gambling is controversial, I truly believe that SB 227 goes a bit too far in its attempt to address this issue. There are a lot of bars, restaurants, social clubs, veterans club that set up March Madness pools, and Super Bowl Sunday grids, and they could be affected by this legislation. Are these establishments the aim of the legislation? I don't believe we should allow these businesses to close down because of this type of betting. There are a lot of offices that hold office pools on NCA basketball, NFL football games and the like. A Class B felony is a very serious penalty, Mr. President, that would make gambling comparable to negligent homicide, felonious sexual assault, kidnapping and arson. Currently, illegal gambling carries a penalty of a misdemeanor with the ability to seek enhanced penalties. I believe that Class B felony is too harsh. In my opinion, the police already can address the issue of illegal gambling. Over the past few months, I have seen several stories in the newspaper about successful raids on illegal gambling establishments. This legislation in my view, if not unnecessary, certainly should be studied further. I support the motion of rerefer.

SENATOR FERNALD: I really wanted to speak to the motion of rerefer which is why I rise again. My understanding of a rereferral is to send something back to committee for more work. I don't think that this needs more work. I think that it is just an effort to delay, and the most recent speech was really a speech against the bill itself rather than in favor of more study. I think the issues here are clear, and that we should defeat the rereferral motion and just vote up or down on the bill as drafted.

SENATOR SQUIRES: I have heard the testimony on this bill. First of all, the bill is not aimed at video gambling. It is portrayed that way perhaps, but that is not the problem. The testimony from the Department of Public Safety indicated that the real target here is organized crime, and that organized crime is increasing in New Hampshire because of the severity of penalties in other states. That is what the bill is aimed at. In response to previous suggestions, the legal community, the law enforcement community, said that without equivocation the current statutes are not adequate to carry out the necessary law enforcement work for organized crime. That is what it is aimed at. So I don't know. I have heard two opinions here that the current law is okay, but frankly a more convincing opinion that it is not. Finally, the record should reflect that this bill does not apply to participants in a gambling activity. I thank goodness to not know how to play poker, but if I did and I was playing



and something happened, I would not fall under this statute, because I am participating. What it is aimed at are people who are organizing and then being reimbursed or getting paid money as a result of the gambling activity that they organized. So a game in a home, an office pool and so on...no one benefits from that except the participants and thus they are not covered. So the testimony that I heard and for those reasons, convinces me that this is a good bill and that we ought to pass it. Thank you.

SENATOR KRUEGER: I rise in opposition to the motion to rerefer this bill. In my conversation with the chief of police of the city of Manchester where I represent part of, I can tell you that I would agree with Senator Squires that this is a bill obviously aimed at organized crime. I think that the amount of work that the police have to put in to "bust these operations" certainly doesn't warrant the penalty of just a misdemeanor. I would hope that we would not rerefer. I would hope that we would pass this and I thank you very much.

SENATOR D'ALLESANDRO: I rise in support of the pending motion to rerefer to study SB 227. Senate Bill 227 is too broad and it gives too much authority to government. We are creating a police state. Senate Bill 227 establishes a penalty of a Class B felony for individuals involved in illegal gambling. A class B felony means a maximum of seven years in prison, a maximum \$4,000 fine for an individual and a \$100,000 fine for a corporation. Senate Bill 227 also expands New Hampshire's laws on forfeiture. Forfeiture allows the government to take a person's property. The expansion powers of SB 227 again, go beyond federal law. New Hampshire's current law on forfeiture, RSA 647:2, III states that "all implements, equipment and apparatus used in violation of this section shall be forfeited." Senate Bill 227 drastically expands this authority to allow any property including money, and proceeds used or gained in violation of the statute to be forfeited. This could be someone's homes, car, business or anything. Are we going to allow government to go into people's home or business and take their property? Even federal law does not allow forfeiture of property gained in violation of federal law. What does the term "gained" mean? How do you define what is "gained" or what is not? Who makes that determination? Senate Bill 227 as amended, goes beyond what federal law prescribes with regard to gambling. It concerns me that we would pass legislation that is even more draconian than federal law. Federal law defines gambling business as "a business which involves five or more persons who conduct, finance, manage, supervise, direct or own all or a part of the business, and has been determined in substantially continuous operations for a period in excess of 30 days, or has gross revenue of \$2,000 per day." Senate Bill 227 imposes a Class B felony on an individual who conducts all or part of gambling activity, not five or more persons as in the federal law. Why is there a difference? Senate Bill 227 defines illegal gambling as a business which has had gross revenues of \$2,000 in a single day and has been in or remains in substantially continuous operation for a period of ten days, not 30 days as in federal law. Again, why is there a difference? Are we going to arrest all of the bingo operations? As a matter of fact, as the bishop is the head of the church, are we going to arrest the bishop for allowing bingo games to be in operation? What is the difference? Senate Bill 227 targets individuals in businesses that accept wagers exceeding \$5,000 during any 30 day period on future contingent events. I don't see this language referenced in federal law. Again, why the difference? Federal law imprisons those who violate the federal illegal gambling statutes for up to five years. Senate

Bill 227 establishes a prison sentence for up to seven years. If we already have the ability to seek enhanced penalties of up to five years, why do we need the Class B felony with longer prison sentences? Senate Bill 227 is too broad and gives too much authority to government. The potential for abuse of this legislation is great. As one of the Senators from Manchester, I am concerned about my district and broad powers given under this legislation. We need to look at this issue closely and ask ourselves whether the penalties fit the crime. I believe the penalties are extreme. Senate Bill 227 has not been fixed. There are still many problems that need to be addressed. I urge my colleagues to vote for rerefer.

SENATOR JOHNSON: Senator D'Allesandro, would you believe, that in section II of the amendment of the bill, III that it states that, "any implements, equipment and apparatus used in violation of this section and any money or proceeds wagered or gained in violation of this section shall be forfeited." It says nothing about homes, cars or anything that you spoke about in your earlier statement?

SENATOR D'ALLESANDRO: I would believe that, Senator Johnson, but again, you have to define "gained." What does "gained" mean? What is the definition of "gained" and how is that to be interpreted and who interprets that? To me, that is the critical issue.

SENATOR FERNALD: Senator D'Allesandro, you made some references to federal law as comparison to this bill. Do you think that we should just repeal all of the RSA's and adopt the federal law as the law of this state and do away with our own state rights and local control?

SENATOR D'ALLESANDRO: Absolutely not, Senator Fernald, but I will tell you something, there are many laws in our books that we really should do away with. That is all that we are doing time and time again, is creating law after law after law. I have seen this legislature, having been around here for the last 25 years, where laws are instituted that have absolutely no relevance. They are brought in for punitive situations and designed specifically against certain individuals. I have seen more and more of that as I have been around these halls. I think that is abhorrent and totally unacceptable. We need law. We need law and we need order, but do we need excessive law? Absolutely not.

SENATOR FERNALD: In the bill as amended, the forfeiture language says that equipment, apparatus and implements used in a gambling activity can be forfeited. Are you saying that you think that includes houses and cars?

SENATOR D'ALLESANDRO: I say that the "or gained" that may include houses or property or cars. We have, under the present statutes, the ability to confiscate things that are present for gaming. They do it all of the time. I don't know if you have read the Union Leader every once in a while, but we get those great pictures on the front page of them dragging the machines out of an operation. So they have been cracking down on them, and they do take the machines. They do have forfeiture laws in place and what we are doing is enhancing those.

SENATOR PIGNATELLI: I am going to support this bill. I was convinced by the testimony that this is a good anti-organized crime bill. The Judiciary Committee does not want this bill back as a rereferral. If you do not like this bill... and I understand that several of the Senators don't want this bill to pass, please vote against the rereferral and then don't vote for the bill. I don't have any problem with somebody disagreeing with the bill, but just don't send it back to Judiciary. We are up to our

eyeballs in rereferred bills, and we are not going to do anything with it even if it is rereferred. So we will just be voting on the same thing next year. Let's just get rid of it now. Thank you.

**Question is on the substitute motion of rerefer.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Hollingworth.**

**The following Senators voted Yes: Fraser, McCarley, Trombly, Disnard, Blaisdell, J. King, D'Allesandro, Cohen.**

**The following Senators voted No: F. King, Gordon, Johnson, Below, Roberge, Fernald, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, Russman, Wheeler, Klemm, Hollingworth.**

**Yeas: 8 - Nays: 16**

**Motion failed.**

**Question is on the adoption of the committee amendment.**

**Amendment adopted.**

**Question is on ordering to third reading.**

**A roll call was requested by Senator Hollingworth.**

**Seconded by Senator Trombly.**

**The following Senators voted Yes: F. King, Gordon, Johnson, Below, Roberge, Fernald, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, Russman, Wheeler, Klemm, Hollingworth, Cohen.**

**The following Senators voted No: Fraser, McCarley, Trombly, Disnard, Blaisdell, J. King, D'Allesandro.**

**Yeas: 17 - Nays: 7**

**Adopted.**

**Ordered to third reading.**

**HB 651, revising the speed limit law. Transportation Committee. Vote 3-0. Ought to Pass, Senator Gordon for the committee.**

**SENATOR GORDON:** Mr. President, HB 651 grants authority to the Department of Transportation to change speed limits on state roads in order to respond to severe weather conditions and/or emergency situations. The Department of Transportation does not currently have this authority. The public would be notified of any change in speed limit by either electronic or changeable road signs. The situations as exist, particularly since the advent of SUV's, where people are traveling at excessive speeds in adverse weather conditions, but they cannot be held accountable because it is unable to prosecute as long as they are traveling under the posted speed limits. The Department of Transportation, particularly on Interstate 93, would like to have the ability to change the speed limits when in fact adverse weather conditions warrant. An enactment of HB 651 authorizes the DOT to react to potentially dangerous situations. The Transportation Committee supports HB 651 and recommends that it be ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 31-L, allowing property taxpayers to choose whether to participate in the funding of nonprofit organizations through their property taxes. Ways and Means Committee. Vote 6-1. Ought to Pass, Senator Fernald for the committee.**



SENATOR FERNALD: I have to start out by saying that there is an error in the calendar and there was an error in the report of the committee as typed up. The committee vote was inexpedient to legislate and I am sorry to say to Senator Brown on her bill, that there is an error here and the committee voted inexpedient to legislate. I am going to ask you...we could recommit this and fix it, but we have our deadline for crossover, and the committee is not meeting until a week from Friday. So what I want you to do is to vote no on ought to pass, and then we will make another motion and we will get this thing done. While I am standing, I might as well tell you why we voted inexpedient to legislate. We figured that there were several problems with this. The first is that often times towns vote to fund nonprofits that are providing services that are necessary for the whole community, like Visiting Nurses, and that should be something that is subject to majority vote rather than letting people opt out individually. The second concern was that there are services that the town provides under its own umbrella, say a recreation department, that some people don't agree with and we don't let people opt out on that, so why should they opt out on a nonprofit appropriation. The third concern and perhaps the most important, is that this appeared to be mind boggling to administer, because someone who opted out of some nonprofit that was in the town budget, the town would have to calculate how many pennies or dollars that they would get back because they are not supporting that particular appropriation. With that being said, please vote no now on ought to pass.

**Motion failed.**

**Senator Fernald moved inexpedient to legislate.**

**Adopted.**

**SB 31-L is inexpedient to legislate.**

**SB 73**, relative to eligibility for off-premise liquor licenses. Ways and Means Committee. Vote 6-1. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: Mr. President, SB 73 simply adds golf facilities to those persons eligible for an offsite catering liquor license. Any license issued would be the subject to approval of the Liquor Commission by not less than five days. The Liquor Commission appeared in favor of the bill. The committee recommends ought to pass.

SENATOR FERNALD: I am the one vote against this bill. I think that this is a policy issue that isn't quite so simple as may have been suggested. Our current scheme of regulation on liquor licenses in New Hampshire is as follows: You can have a liquor license for your premises and the general scheme is that it is for people who serve food and also serve alcoholic beverages at the same time. You cannot get a simple bar license in New Hampshire. We do not have storefront bars in New Hampshire. You have to serve food too. The first category of liquor licenses is a full service establishment. The second category, which is carved out, is a cocktail lounge license, which again, cannot be a storefront, but it can be an airport, a golf course, a bowling alley, a veterans club, a military club, a college club and there are several other categories. These are specific places that are allowed to have a cocktail lounge and not serve any food. The third category license is off premises. You can take your liquor license on the road. That

is limited under current law to full service restaurants, to convention centers, to hotels. They are food and liquor places and they can get an off premises license and take it on the road. This bill will allow a golf course to take its liquor license on the road. We have a lot of golf courses that have simply a bar. Some do food too, but the golf course in Peterborough has just a cocktail lounge and this bill will allow **TAPE CHANGE** and maybe that is what we want to do, but if we are going to do that, why shouldn't we let the ballrooms, the veterans clubs, the airports and everybody else who has a cocktail license to go off site and take their liquor license on the road. So I think that this is a mistake. It came up because a golf course wanted to take their license out. What we found out in the hearing was that they have a banquet facility. They're actually a catering operation and they can simply change their license to an onsite catering banquet hall type license and then they can go on the road with it, and we don't need to change the law to accommodate what they want to do. I think that we are going off into unknown territory if we do this, because the ballrooms will be in next week and the bowling alleys to do the same thing.

SENATOR HOLLINGWORTH: I rise to ask the Senate for support of this bill. I spoke with the Department and he assured me that the commission had voted unanimously in support of this piece of legislation. In fact, his opening words in his testimony when he appeared before Finance is, "I have come to testify in favor of this bill." "This bill does in fact allow golf facilities to have a license and the chapter is referring to the eligibility for off premise liquor license." It goes on further to say, "that they can serve this with or without food" which is what a restaurant can do, a hotel can do and the convention center. I feel that this is just allowing the golf facilities that came in and requested this to have that ability to do the same. Mr. Moore stated that any further expansion of that would be a problem, and that he would need more staff. Right now they only have 20 inspectors. They had 25 several years ago and now they are down to 20 with one more being added this year by the federal government with the 75/25 match. They have a thousand more licenses in which they have to take care of since they have had this increase, and 3,000 more tobacco licenses. So any further expansion, though they do support the golf facility being added, they would have to come in and ask for further staff.

SENATOR FERNALD: Senator Hollingworth, why should we allow the golf courses to take their liquor license on the road and not the ballrooms and the bowling alleys?

SENATOR HOLLINGWORTH: Because they have not asked to do so. Thank you, Senator Fernald.

SENATOR FRASER: Senator Fernald, I think that I reported that the bill was reported out of committee unanimously and I forgot that Senator Fernald had voted against it.

**Adopted.**

**Ordered to third reading.**

**SB 76-L**, allowing certain municipalities to offer tax exemptions to foster commercial and industrial construction. Ways and Means Committee. Vote 7-0. Ought to pass with amendment, Senator F. King for the committee.

1999-1040s

08/10

**Amendment to SB 76-LOCAL**

Amend the bill by replacing all after section 1 with the following:

2 New Subdivision; Commercial and Industrial Construction Exemption. Amend RSA 72 by inserting after section 72 the following new subdivision:

**Commercial and Industrial Construction Exemption****72:73 Definitions.****I. In this subdivision:**

(a) "Commercial uses" shall include all retail, wholesale, service and similar uses.

(b) "Eligible municipality" shall mean any city or town which meets 2 of the following 3 criteria as established by the director of the office of state planning:

(1) Is within the lowest 30 percent of municipalities based on equalized taxable valuation per person for the most recent year available prior to the vote taken pursuant to RSA 72:75;

(2) Is within the highest 30 percent of municipalities based on unemployment rate for the average of the 3 most recent years available prior to the vote taken pursuant to RSA 72:75;

(3) Is within the lowest 30 percent of municipalities based on population growth for the most recent five-year-period available prior to the vote taken pursuant to RSA 72:75.

(c) "Industrial uses" shall include all manufacturing, production, assembling, warehousing, or processing of goods or materials for sale or distribution, research and development activities, or processing of waste materials.

II. An eligible municipality adopting a tax exemption pursuant to RSA 72:74 may, in lieu of the definitions in this section, adopt by reference the definitions of similar terms as may be contained in that town or city's zoning ordinances.

**72:74 Property Tax Exemption.** An eligible municipality may, by vote of the local legislative body pursuant to RSA 72:75, adopt a new construction property tax exemption for commercial or industrial uses, or both. The exemption shall apply only for property taxes assessed by the municipality which shall exclude state education property taxes under RSA 76:3 and shall be a specified percentage on an annual basis of the increase in assessed value attributable to construction of new structures, and additions, renovations or improvements to existing structures. The exemption may run for a maximum period of 10 years following the new construction; provided, however, that the exemption for all years shall cumulatively not exceed 500 percent of the increased assessed value. Once adopted by the local legislative body, the percentage rate and duration of the exemption shall be granted uniformly within that municipality to all new construction for which a proper application is filed.

**72:75 Procedure for Adoption.** A municipality desiring to adopt the provisions of RSA 72:74 shall do so in the following manner:

I. In a town which is an eligible municipality, the question shall be placed on the warrant of a special or annual town meeting, by the governing body or by petition pursuant to RSA 39:3, and shall be voted upon by official ballot if that town has adopted the official ballot for the election of officers. A public hearing shall be held at least 15 but not more than 60 days prior to the vote.











